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

***Reserved on: 28.02.2020***

***Pronounced on: 23.03.2020***

+ BAIL APPLN. 2839/2019

MOHAN KUMAR

..... Petitioner

Through Mr.Sandeep Dhingra, Adv. with  
Mr.Vikas Nagpal, Adv.

versus

NARCOTIC CONTROL BUREAU

..... Respondent

Through Mr.Rajesh Manchanda, Adv. with  
Mr.Rajat Manchanda, Mr.Subham  
Kothari, Adv.

**CORAM:**

**HON'BLE MR. JUSTICE SURESH KUMAR KAIT**

**J U D G M E N T**

1. Present petition is filed under section 439 Cr.P.C for grant of bail in case No.VIII/04/DZU/2019 registered for the offences punishable under section 22(c) & 29 of NDPS Act which is pending for trial before learned Special Judge, ASJ, Patiala House Courts, New Delhi who has dismissed bail application under section 439 Cr.P.C. of petitioner vide order dated 16.10.2019 in case No.SC/335/19.

2. Case of NCB/prosecuting agency is that the aforesaid case was registered on the complaint on 19.01.2019 whereby stated that at around

14:30 pm, when NCB team reached House No.671, Sen Mohalla, Mahipalpur Bypass Road, New Delhi which is the Office of Apex Courier, Delhi. Upon questioning by NCB officials, the Manager of Apex Courier informed them about the parcel which contained certain medicines which had arrived from Agra and included Zolpidem and Alporazolam Tablets and the parcel was addressed to Mr. Ajay Mahipal, Delhi. The courier was received at the office of Apex Courier by its Manager, Mr.Om Prakash on 19.01.2019. The courier was collected by Lallan who was sent by Birpal. The investigating agency asked Lallan to open the parcel and ceased the medicine therein. In further course of action, the investigating agency detained the petitioner on 23.01.2019 for investigation and he was subsequently arrested on 25.01.2019. He remained in custody till 10.04.2019 and thereafter, he was released on interim bail which continued till 02.07.2019 on the ground of medical condition of his wife who met with an accident and also due to old age of his parents, who were around 76 (mother) and 80 (father) years old and suffering from heart ailments and various other age related ailments.

3. As per the case of prosecution, investigating agency raided the house of petitioner on 29.01.2019 but no contraband was recovered.

4. Learned counsel appearing on behalf of petitioner submits that petitioner cannot be said to be in the conscious possession of the contraband as recovery has been not made at the instance of petitioner and the investigating agency could not prove any direct case against petitioner.

5. In the present case, prosecution has fabricated the story wherein Dr.Brij Bhushan Bansal (co-accused) allegedly sent a parcel on 18.01.2019 through courier containing psychotropic medicines ALPRAZOLAM (5000) and ZOLPIDEM (50000) booked by said doctor from Agra through Gaurav Mehndiratta, co-accused and Satpal, consigner in the name of consignee Ajay Mahipal, Delhi. The consignment slip bearing No.20235315 for the said parcel from Agra with consigner name as Satpal (Agra) and consignee name as Ajay Mahipal, Delhi, had the delivery address of Apex Courier Delhi as 671, Sen Mohalla, Near Booster Pump, Mahipalpur, New Delhi.

6. Learned counsel appearing on behalf of petitioner submits that bare perusal of the receipt would prove the fraud played by NCB, as the said courier receipt has been generated from the Delhi office of courier company (Apex Courier) and not from Agra, from where said courier was allegedly booked. Petitioner was neither the consigner nor the consignee of said parcel. Alleged parcel was seized by NCB team on 19.01.2019 at about

03:50 pm at Apex Courier, New Delhi. Accordingly, notice was subsequently issued to petitioner on 23.01.2019 under section 67 of NDPS Act at about 08:30 am at his residence 432, Nilgiri Apartments, Alaknanda, New Delhi, to join investigation in connection with seizure of alleged parcel which was effected on 19.01.2019 at Apex Courier, Mahipalpur, Delhi. Shockingly, petitioner was shown as accused on 19.01.2019 itself (i.e. the day of alleged raid) at Serial No.1 of column 7. Petitioner was one of the Director of M/s S M Courier, having office at S M Plaza Building, Khasra No.1016/2, Opposite CISF Camp Gate, Bypass Road, Mahipalpur, Delhi. Subsequently, raids were conducted at:

- a. S M Courier office at S M Plaza Building, Khasra No.1016/2, Opposite CISF Camp Gate, Bypass Road, Mahipalpur, Delhi on 23.01.2019. Annexure 37 on page 220-221 of main chargesheet.
- b. Report of search by NCB at S M Courier office on 24.01.2019 is enclosed as Annexure 39 on Page 223-234 of main chargesheet.
- c. At residence of petitioner herein, Mohan Kumar, 432, Nilgiri Apartments, Alaknanda, New Delhi 110019 on 29.01.2019 Annexure-49 on Page 257 of main chargesheet.

7. Learned counsel further submits that in all the above mentioned

raids/search, no recovery, no money trail and no incriminating evidence was found from the office of petitioner or his residence mentioned above which has been admitted by the Prosecution. Alleged seizure was made at Apex Courier, Delhi and NCB admits that petitioner was not present at Apex Courier, Delhi i.e. the site where alleged raid and seizure was effected on 19.01.2019.

8. Learned counsel further submits that as per *panchnama*, seized psychotropic medicines are as follows:

S. No.	Name of Medicine	Manufacturer Address	Batch No.	Total Number of Strips (Nos.)	Total No of Tablets @ 10 Tablets in Each Strip
1.	Alprazol	Mauza Ogli, Suket Road, Kala-Amb Road, Distt.-Sirmour (H.P.), Pin Code: 173030.	DVNTD279	500	5000
2.	Zolpidem Tartrate	M/s JPEE Drugs Sector-6A, Plot No.53, SIDCUL Ranipur, Haridwar-249403, Uttrakhand, India	JDT3693	500	5000
3.	Zolpidem Tartrate		JDT3693	4400	44000
4.	Zolpidem Tartrate		JDT3692	100	1000
	Total			5500	55000

9. Accordingly, in order to further investigate the matter regarding to

whom the manufacturer had sold the medicines, NCB team sent letters to the manufacturers of medicines vide their letters to:

- a. M/s JPEE Drugs vide letter No.VIII/04/DZU/2019/628 dated 15.03.2019 (Annexure 53 on page 262 of main chargesheet).
- b. Director, Digital Vision vide letter No.VIII/04/DZU/2019/627 dated 15.03.2019 (Annexure 54 on page 263 of main chargesheet).

10. M/s JPEE Drugs replied on 26.03.2019 that they have sold the medicines to M/s J P Medical Agencies, 25, Sant Singh Suri Market, Fountain Agra. They had also enclosed copy of the invoices and other documents in support of their letter dated 26.03.2019. (Annexure 58 on page 310 of main chargesheet). Thereafter, NCB sent a letter to M/s J P Medical Agencies vide letter No.VIII/04/DZU/2019/1787 dated 05.07.2019 asking them to submit details of Agency/Persons to whom the medicines were subsequently sold. (Annexure 72 Page 349 of main chargesheet).

11. It is not on record to whom J P Medical Agencies (recipient of medicines from manufacturer M/s JPEE Drugs) have sold these medicines, as the letter has not been responded by M/s J P Medical Agencies. Even the Letter sent to M/s Digital vision remains un-replied. There is nothing on record to show that Mohan (petitioner herein) had ever purchased any of the

above medicines.

12. Learned counsel submits that petitioner is an Ex-Army Officer, who took voluntary retirement from Indian Army after serving 18 ½ years and got discharged by Indian Army on 20.11.2018 and joined S M Couriers, just two months prior to implication in the present case. While serving in the Indian Army, petitioner was awarded Chief Integrated Defence Staff Commendation certificate for his contribution to the Indian Army. Besides that, he has also been associated in Operation Shaurya, a counter insurgency operation in North East. He does not have any criminal history, however, prosecution with malafide and mischievous intention has labeled petitioner as Kingpin for committing above-stated offence, despite the fact that recovery has not been effected from him and no money trail has been found which implicates him.

13. It is further submitted that petitioner was granted interim bail on 10.04.2019 on ground of ill-health of his wife due to her accident and thereafter, extension of bail was rejected vide order dated 02.07.2019. The interim bail was again allowed on 17.01.2020 due to death of his father and he surrendered on the expiry of interim bail on 01.02.2020. Thus, it is clearly established that petitioner has never misused or violated his interim

bail and diligently obeyed the orders of court of law.

14. When no recovery, no money trail, no incriminating evidence have been affected against petitioner, the question of any bar for grant of bail, as provided under section 37 of NDPS Act does not apply against petitioner.

15. Learned counsel for petitioner has relied upon the case of ***Kashmir Singh vs. NCB: MANU/DE/9207/2006***, wherein this Court vide order dated 18.08.2006 has categorically mentioned that bail can be granted even if section 37 of NDPS Act is operational after satisfying the conditions laid down in the said judgment. Learned counsel submits that the present case is perfect and securely covered under the judgment.

16. He further relied upon the case of ***Noor Aga vs. State of Punjab: (2008) 16 SCC 417***, whereby Hon'ble Supreme Court has observed as under:

*“Sections 35 and 54 of the Act, no doubt, raise presumptions with regard to the culpable mental state on the part of the accused as also place burden of proof in this behalf on the accused; but a bare perusal the said provision would clearly show that presumption would operate in the trial of the accused only in the event the circumstances contained therein are fully satisfied. An initial burden exists upon the prosecution and only when it stands satisfied, the legal burden would shift. Even then, the standard of proof required for the accused to*



*prove his innocence is not as high as that of the prosecution. Whereas the standard of proof required to prove the guilt of accused on the prosecution is "beyond all reasonable doubt" but it is 'preponderance of probability' on the accused. If the prosecution fails to prove the foundational facts so as to attract the rigours of Section 35 of the Act, the actus reus which is possession of contraband by the accused cannot be said to have been established."*

17. Moreover, in the case of ***Dalip Singh @ Langda vs. The State (NCT of Delhi)*** in ***Bail Appln.1312/2018*** delivered on 14.01.2019 this Court held as under:

*"11. On perusal of the record, it is prima facie seen that there are two major missing links in the case of the prosecution. There is no link established by the prosecution between the petitioner with the alleged supplier Manoj. Further the entire case of the prosecution, in so far as petitioner is concerned is circumstantial i.e. based solely on disclosure statement of a co-accused which is per se not admissible without there being any corroboration. Prosecution has not been able to establish any connection between the subject offence and the bank accounts, where the petitioner is alleged to have been depositing money or with the holders of those accounts. Merely because the petitioner has been having telephonic conversation with the co-accused, would not be sufficient to hold that petitioner is guilty of the subject offence. There is no recovery made from the petitioner."*

18. On the other hand, learned counsel for the respondent submits that unless and until the petitioner meets the embargo of section 37 of the NDPS

Act, there is all possibility and likelihood that petitioner will indulge in the same kind of activities which are detrimental to the interest of society at large. However, petitioner has not shown any reasonable ground for believing that he was not guilty of such offence and he is not likely to commit any offence while on bail and as such, the present petition is liable to be dismissed.

19. In addition to above, petitioner is actively involved in abetment and criminal conspiracy for commission of offence in this case. The complicity is apparent and admitted in the statements of petitioner and other accused persons recorded under section 67 of the Act which is admissible piece of evidence. There is recovery of commercial quantity of psychotropic substance and one person namely Lallan, pick up boy of M/s S.M. Courier company was sent by accused Birpal to collect the parcel and the same was to be sent to U.S.A. During investigation, it was revealed that accused Birpal in conspiracy with other accused persons including the petitioner was doing illegal business of trafficking of psychotropic substance. The parcel containing psychotropic substance was collected by pick-up boy Lallan from the Manager of Apex Courier on 19.01.2019. The act and role of all accused persons including petitioner surfaced and on the basis of sufficient material

to show that all accused persons including petitioner were in criminal conspiracy and accordingly, they were arrested in this case and on completion of investigation, a detailed chargesheet supported with relevant documents and material was filed before the Ld. Trial Court and the Ld. Trial Court was pleased to take the cognizance committed by accused persons in this case.

20. It is further submitted that all accused persons are involved in criminal conspiracy as the offence is being committed with involvement and assistance of accused persons. In the present case, petitioner is actively involved in criminal conspiracy and abetment for commission of offence of this case thereby petitioner was also in constructive and conscious possession of the seized contraband mentioned above. It is admitted fact that petitioner was incharge of day-to-day business of M/s S.M. Courier and as such, offence in present case has been committed with consent, connivance and knowledge with criminal conspiracy of accused persons. Co-accused Brij Bhushan Bansal has stated in his statement under section 67 of NDPS Act that in the year 2005, a case under NDPS Act was registered against him in Agra and the said case is still pending in Trial Court and he is on bail in that case. He met petitioner about 3 years back in Agra and further stated

that he again met him about three months back and told him that he would supply some packets and send the same to him through courier in Delhi and accordingly he sent the packets on three different dates to petitioner and he also received a sum of Rs.2 lac through Hawala at Agra from Delhi.

21. I have heard learned counsel for the parties and perused the material available on record.

22. As stated in the present case, the petitioner joined the courier company namely M/s S.M. Courier only two months prior to the incident as Director as there is nobody to look after the day-to-day business of the company and was learning the business. As per the panchnama, no recovery could be made out from the custody of petitioner. In the case of ***Mohan Lal vs. State of Rajasthan: (2015) 6 SCC 222***, the Hon'ble Supreme Court held that *"the legislature while enacting the said law was absolutely aware of the said element and that the word "possession" refers to a mental state as is noticeable from the language employed in Section 35 of the NDPS Act."* The said provisions read as follows:

*"35. Presumption of culpable mental state- (1) in any prosecution for an offence under this Act, which requires a culpable mental state of the accused, the court shall presume the existence of such mental state but it shall be defence for the accused to prove that he*

*had no such mental state with respect to the act charged as an offence in that prosecution.*

*Explanation- In this Section 'culpable mental state' includes intention, motive, knowledge, of a fact and belief in, or reason to believe, a fact.*

*(2) For the purpose of this section, a fact is said to be proved only when the court believes it to exist beyond a reasonable doubt and not merely when its existence is established by a preponderance of probability.”*

23. In the case of ***Kashmir Singh (supra)***, it is held by this court that the embargo under section 37 NDPS Act has been explained in detail as to how the same shall not apply and under what circumstances, an accused is entitled to bail.

24. In the case of ***Mohd. Ramzan vs. State (NCT of Delhi): 2005 (82) DRJ 435***, it was observed that it is requirement of Section 37 that the Court considering an application for bail has to go into the question as to whether there exist or do not exist reasonable grounds for believing that the accused is not guilty of such offence. Consequently, it becomes imperative that even at the stage of grant of bail, the Court has to go into the question of whether any reasonable grounds exist to indicate that the accused is not guilty of the offence on the basis of the available material before the Court.

25. On perusal of the impugned order, this Court is of view; learned Trial Court has erred in not observing that the alleged parcel seized by NCB was

dispatched from Agra as per the Charge Sheet and Panchnama whereas the said Consignment Slip marked as Annexure-5 on page no.70 of the Charge-Sheet, shows the address of the said courier company. i.e. Apex Courier, Mahipalpur, Delhi, clearly proving that the said Consignment Note (annexed herein as Annexure A-7) has been fabricated at Delhi and the same was never ever generated at Agra. Said factum clearly falls under the category wherein this Court has observed that the Court should be satisfied that there are reasonable grounds for believing that the accused is not guilty of such offence. There is no mention of any such Consignment Slip in the Seizure Memo or the Panchnama of the main Charge Sheet which further proves that the Consignment Slip has been concocted after 19.01.2019 and subsequently inserted in the main Charge-Sheet, but Ld. Trial Court for reasons unknown did not take notice of the same and passed the order dismissing Bail Application of petitioner.

26. Moreover, sample received at the laboratory was in the form of light brown coloured lump and the sample, when allegedly taken was said to weigh 5 gms., however, at the laboratory, it was found to weigh 4.6 gms. Whereas in the present case, the sample was sent and tested by CRCL, Delhi and as per the alleged Consignment Note No.20235315 (generated in Delhi

and not in Agra) the total weight of the parcel is mentioned as 25.460 kg and weight of the seized contraband was found to be 21.960 kg. By no stretch of imagination, can the packing material be equivalent to 3.5 kg, thus, it is clearly evident from the aforesaid discrepancy that no such parcel was ever sent from Agra and received at Delhi at the office of Apex Courier. Moreover, no Consignment Note from Agra was ever generated and the consignment note annexed by the NCB in its Charge-Sheet is generated the office of the courier company at Delhi.

27. In addition to above, statement of petitioner and his sister Ms. Sandhya Sharma seems to be twisted by NCB in their complaint for the very simple reason that Ms. Sandhya Sharma has nowhere stated in her statement before the NCB under section 67 of the NDPS Act that she was dealing with drugs which are not covered under NDPS but to the contrary, NCB has twisted her statement by submitting that *"She received only the Whatsapp messages containing drugs which are not covered under NDPS Act, whereas accused Mohan Kumar used to receive Whatsapp messages on his phone containing drugs which are covered in NDPS."* Furthermore, petitioner has nowhere admitted that drugs were being sent by him and in fact, statement of petitioner would prove that he was never in the mental state of illegal

trafficking of drugs. It is pertinent to mention here that Ld. Trial Court did not even refer to the statements of Ms. Sandhya Sharma and petitioner, recorded under section 67 of NDPS Act, before passing order of dismissal of Bail Application.

28. Be that as it may, the respondent NCB wrote a letter dated 15.03.2019 to the Director, JPEE Drugs, Plot No.53, Sector-6A, SIDCUL, Haridwar, Uttarakhand whereby they directed aforesaid company under section 67 of NDPS Act to provide details in prescribed format in excel sheet as well as in hard copy at the earliest to facilitate investigation into the matter regarding CAF, Distributor name, address, email and license no. and quantity supplied whereby they submitted details as under:

S. NO.	DISTRIBUTOR NAME, ADDRESS, LICENCE NO.	BILL NO.	BATCH NO.	QUANTITY SUPPLIED
1	M/s J.P. MEDICAL AGENCIES 25, SANT SINGH SURI MARKET FOUNTAIN AGRA-282003 GOWDUN F-50 SITE C INDUSTRIAL AREA, SIKANDRA AGRA-7 (U.P.) DL.NO. 51GR/20B/2011 & 51AGR/21B/2011 <b>NEW LICENSE NO. AGA-2016/20B/00046, AGA-2016/21B/00046, VALID UPTO- 19/10/2021.</b>	JD/0591/12 DATE 21.12.2018 & JD/0604/12 DATE 31.12.2018	JDT-3692 12/2018 11/2021	2240 BOX 715 BOX



2	M/s J.P. MEDICAL AGENCIES 25, SANT SINGH SURI MARKET FOUNTAIN AGRA-282003 GOWDUN F-50 SITE C INDUSTRIAL AREA, SIKANDRA AGRA-7 (U.P.) DL.NO. 51GR/20B/2011 & 51AGR/21B/2011 <b>NEW LICENSE NO. AGA-2016/20B/00046, AGA-2016/21B/00046, VALID UPTO- 19/10/2021.</b>	JD/0604/12 DATE 31.12.2018 & JD/0620/01/ DATE 09.01.2019	JDT-3693 12/2018 11/2021	240 BOX 2014 BOX
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29. In addition to above, said M/s JPEE Drugs also sent tax invoice dated 21.12.2018 and freight receipt of Rs.20,000/- with tax invoice of 31.12.2018, e-way bill dated 31.12.2018 addressed to M/s J.P. Medical Agencies, Agra, Uttar Pradesh.

30. Thus, from the record, it is not established that how the petitioner is connected with the consignment in question except the bare allegations made by Dr. Brij Bhushan Bansal, who himself is accused and the disclosure statement of accused is not admissible in law against another co-accused unless and until it is substantiated by recovery/material on record.

31. Admittedly, in the present case, there is no recovery being effected from the petitioner either for substance or money trail. Petitioner had retired from Indian Army just three months prior to the alleged incident. It seems

that the above-named doctor has shifted the onus of the offence on petitioner due to the reasons best known to him.

32. In view of above facts, this Court is of the view that prima facie case is not established against the petitioner. However, since the present order is being passed in bail application, therefore, without commenting on the merits of the prosecution case, the petitioner deserves bail who is in judicial custody since 02.07.2019.

33. Accordingly, the petitioner shall be released on bail on his furnishing personal bond in the sum of ₹25,000/- with two sureties of the like amount to the satisfaction of the Trial Court.

34. Before parting with the order, it is relevant to mention that nothing contained in this order shall be construed as an expression on the merits of the prosecution case. The Trial Court shall not get influenced by the observations made by this Court, while passing the final orders in the trial.

35. The present petition is allowed and disposed of.

36. Copy of this order be transmitted to the Jail Superintendent and the

Trial Court concerned for compliance.

37. Order dasti under signatures of the Court Master.

**(SURESH KUMAR KAIT)**  
**JUDGE**

**MARCH 23, 2020**

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