

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

+ **BAIL APPLN. 121/2021**

Date of decision: 26th February, 2021

IN THE MATTER OF:

MANOJ GUPTA

..... Petitioner

Through Mr. Ramneek Mishra, Mr. Asheesh
Raizada and Mr. Nayan Kunwar
Singh, Advocates

versus

NARCOTICS CONTROL BUREAU

..... Respondent

Through Mr. Subhash Bansal, Sr. Standing
Counsel with Mr. Shashwat,
Advocate for NCB

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

SUBRAMONIUM PRASAD, J.

1. This is an application under Section 439 of the Cr.P.C seeking regular bail in C.C.No. VII/36/DZU/2020 dated 27.11.2020, registered at Police Station R.K Puram, Delhi for offences under Sections 9A, 25A, 22, 23 and 29 of NDPS Act. The petitioner was arrested on 27.09.2020.

2. The case of the prosecution as given in the Status Report is as under:

“Based upon information received on 14-08-2020, a parcel bearing AWB No. 6098216305 lying at Sky Line Logistics, 71/3, Rama Road, Najafgarh Industrial Area, Delhi, which had been booked by one Lilesh Sen, Bhilwara, Rajasthan and destined to Deborah Wood, Adelaide, Australia, was examined. The said parcel was found to contain ladies clothes and 2 khaki colour cardboard and 24 plastic type envelopes. The 2 khaki cardboard contained 04 plastic packets, thereafter

total 28 plastic packets were checked and were found to contain white powdery substance i.e. gave positive result for Pseudoephedrine. The total weight of substance was 3 Kgs.800 grams.

During investigation, it revealed by Mr. Vinod Singh (owner of TRACON Courier) in his statement u/sec. (37, NDPS Act that the said parcel was initially booked on 12-08-2020 and gave details of whatsapp chat & mobile numbers of the person who booked, as well as stated that same person had booked two more parcels earlier in July & August, 2020. Since parcels were booked on ID of one Lilesh Sen, during investigation, Lilesh Sen was summoned and he revealed in his statement u/sec. 67 on 3-9-2020 that he had travelled to Udaipur on 13-07-2020 and had stayed at Ashirwad Hotel. During his stay at said Hotel, the person at Reception had taken his ID & PAN Card and had gone out of hotel on pretext of photocopy of IDs. Thereafter, on 27-09-2020, notice under section 67 NDPS was served upon Manoj Gupta at his Ashirvad Hotel and he tendered his voluntary statement on 28-9-2020, wherein he admitted that the said parcel was booked by him using the ID documents of Lilesh Sen. He also admitted that he had booked said parcel on instructions of one person Rafiq of Chennai. Further revealed that he had sent more parcels using the ID of Lilesh Sen. He further revealed the manner in which he had obtained documents from Lilesh Sen and the way he had used them for booking of said parcel containing contraband at Tracon Courier. Other documents i.e. visitor register, 16 Aadhar Cards (original), 6 driving license (original) and 2 voters card (original) in name of several persons were also produced by Manoj Gupta during his statement. In further statement of Lilesh Sen dated 28-9-2020, he had identified Manoj Gupta as the person who was present at Hotel Ashirvad and had taken his ID documents. Even owner of Tracon Courier in his statement dated 28-9-2020 also identified

accused Manoj Gupta as the person who had come to book the said parcel "(AWB 6098216305)."

3. Mr. Ramneek Mishra, learned counsel for the petitioner contends that Pseudoephedrine is only a controlled commodity and therefore the rigor of Section 37 NDPS Act does not apply to the facts of this case. He contends that the only evidence against the petitioner are the statements given by Lilesh Sen and Vinod Singh which are not admissible in view of the judgement of Tofan Singh v. State of Tamil Nadu, (2013) 16 SCC 31. He would state that other than the two disclosure statements the only other document is the voluntary statement of the petitioner under section 67 of the NDPS Act. He would state that the charge-sheet has been filed. He would contend that there are no antecedents against the petitioner. It is submitted that there is no likelihood of the trial concluding in the near future and the petitioner be released on bail.

4. On the other hand, Mr. Subhash Bansal, Sr. Standing Counsel appearing for the NCB states that the petitioner has sent parcels on earlier occasions also. He would contend that 3.8 Kg. of Pseudoephedrine has been seized which is a huge quantity. It is contended that the possibility of the petitioner indulging in the same activity cannot be ruled out. It is further stated that if enlarged on bail the petitioner is likely to tamper evidence.

5. Heard Mr. Ramneek Mishra, learned counsel for the petitioner and Mr. Subhash Bansal, Sr. Standing Counsel appearing for the NCB and perused the documents.

6. Pseudoephedrine is a controlled commodity and therefore the learned counsel for the petitioner is correct in stating that the rigor of Section 37

NDPS Act is not applicable to the present case. The petitioner is in custody for about 4 months now. The petitioner does not have any criminal antecedents. At this stage this Court is not inclined to go on the merits of the case as it will cause prejudice to the parties.

7. Considering the facts and circumstances of the case this Court is inclined to grant bail to the petitioner on the following grounds:

- a) The petitioner shall furnish a personal bond in the sum of ₹1,00,000/- (Rupees One Lakh Only) with one surety of the like amount by a relative of the petitioner to the satisfaction of the Trial Court.
- b) The petitioner must surrender his Passport with the IO.
- c) The petitioner must make available his mobile number to the IO and the petitioner shall keep his mobile number functional throughout the trial.
- d) The petitioner shall report to the IO every Monday.

8. The petition is, accordingly, allowed in the abovementioned terms and disposed of.

9. A copy of this order be transmitted to the Jail Superintendent concerned and the Trial Court for information and necessary compliance.

SUBRAMONIUM PRASAD, J.

FEBRUARY 26, 2021

Rahul