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

% *Date of Judgment: 02 September, 2020*

+ **BAIL APPLN. 602/2020**

JAY HARESH SOMAIYA

..... Petitioner

Through: Mr Akshay Bhandari and Mr
Digvijay Singh, Advocates.

versus

NARCOTIC CONTROL BUREAU

..... Respondents

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

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

[Hearing held through video conferencing]

VIBHU BAKHRU, J. (ORAL)

1. The petitioner has filed the present petition seeking bail in connection with complaint case bearing S.C. No.107/2018 filed by the Narcotics Control Bureau (hereafter 'NCB') against the petitioner and six other accused for commission of offence punishable under Sections 8(c), 20 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereafter 'NDPS Act').

2. It is alleged in the complaint that on 05.11.2017, a secret

information was received by one of the intelligence officers of NCB that two persons, Rafik and Guljar aged about twenty five years and twenty two years respectively, would arrive at Hazrat Nizamuddin Railway Station for their onward journey to Mumbai in the evening of 05.11.2017. According to the information, they would be carrying *charas* in their bag and their search would yield a huge quantity of *charas*. According to NCB, this information was telephonically communicated to the Superintendent, Delhi Zonal Unit, NCB at about 9:00 AM in the morning. The information was subsequently reduced in writing by Shri Rajeev Shehrawat, IO, NCB. The Superintendent, NCB thereafter directed Shri Anand Kumar, IO to constitute a team and take necessary action in accordance with law.

3. NCB claims that on the basis of the said instructions, a raiding team was constituted and after collecting the field testing kit, electronic kit, electronic weighing machine and other accessories, the raiding team reached Hazrat Nizamuddin Railway Station. According to NCB, raiding team became aware that Rafik and Guljar were proceeding to Mumbai by train no. 12954. The raiding team reached at platform no. 3 at about 15:45 hours and at 16:35 hours noticed three persons including two who conformed to the description of Rafik and Guljar, coming down the stairs to the platform. Another person, who was accompanying them, was carrying a trolley bag in his hand. It is stated that the raiding team of NCB also joined two other officials from the Railway Protection Force as independent witnesses.

4. The said three persons were accosted and inquiries made from

them revealed that their names were Rafik, Guljar and Ramdev. Ramdev stated that he was a travel agent and the trolley bag carried by him belonged to Rafik. He stated that he come to the platform to show Rafik and Guljar the train on which they were booked. Rafik also acknowledged that the trolley bag being carried by Ramdev belonged to him.

5. According to NCB, notices under Section 50 of the NDPS Act were served on the Rafik, Guljar and Ramdev. They were searched but nothing incriminating was found on their person. However, on searching the trolley bag, it was found that bottom of the said bag was covered with the card board. On removing the card board, it was found that brown colour packets were concealed in the bottom of the trolley bag. In all twenty seven bags were recovered from trolley bag. According to NCB, all the packets were similar. They were cut and were found to be contain a dark coloured substance in semi solid form. The small quantity of dark coloured brown substance was taken from each of the packets and tested with the help of field testing kit. It is alleged that on testing, the said substance was found to be *charas*. The packets were weighed and it was found that the total quantity of *charas* recovered was 6.2 kgs. The substances in all the twenty seven packets were similar and therefore, the same was mixed and two samples weighing 25 grams each were drawn and placed in a zip lock pouches. According to NCB, the said samples were sent for chemical analysis which also confirmed that the substances recovered was *charas*.

6. According to NCB, notices under Section 67 of the NDPS Act

were served on Rafik, Guljar and Ramdev and their statements were recorded. Statements of Rafik and Guljar were recorded on 06.11.2017. Rafik, in his statement (which the NCB claims, he tendered voluntarily), stated that he was a resident of village Hurla, Tehsil Bhuntar, District Kullu, Himachal Pradesh. He stated that he never studied in school. Initially, he used to look after the cattle (buffaloes) at home. Thereafter, for about 5 to 6 years, he was engaged in the work of transporting sand and grit on mules. And, since the past six months, he was driving a tourist taxi. He stated that near about 4/5 months ago he met a tourist named Jay Somaiya (petitioner herein). He stated that subsequently on two or three occasions Jay Somaiya had used his taxi. He claimed that the petitioner had taken his telephone number and used to call him whenever he used to visit Bhuntar and he would drive him to his destination. He claimed that the petitioner had asked him to work for him and on one occasion petitioner gave him ₹12,000/- and asked him to carry a packet of *charas* to Delhi. He stated that thereafter on another occasion around Diwali he had carried his luggage to Mumbai and handed over the same to one person named Abdul and he paid him a sum of ₹40,000/- in cash. He stated that on 03.11.2017, the petitioner had called him to Kasol Village and handed over a packet for being transported to Mumbai. He was instructed to hand over the same to a person named Raunak and was assured that he would be paid a sum of ₹80,000/-. Rafik stated that on this occasion he asked his cousin Guljar to accompany him and promised him to pay ₹40,000/-. He stated that

both of them reached Delhi in the morning on 05.11.2017 and checked into a hotel near Hazarat Nizamuddin Railway Station. He claims that he gave three packets in Delhi to a man named Gaurav and got ₹15,000/- from him. Thereafter, from the said money, he purchased train tickets to Mumbai from a travel agent named Ramdev. However, they were stopped by the NCB team on the platform before they could board the train.

7. Rafik further stated that the petitioner is a resident of Mumbai and is currently staying in Choj Village, Kullu District, Himachal Pradesh and the *charas* recovered from his possession was handed over to him by the petitioner for being delivered to a person named Raunak in Mumbai. However, he did not know Raunak's telephone number. Rafik alleged that the petitioner carries on the business of dealing in *charas* and he used to purchase the said contraband from Ramesh, Neelchand @ Neelu and Purshottam @ Kalu.

8. On the basis of the recovery and the voluntary statement made by Rafik, he was arrested at 1700 hours on 06.11.2017. Guljar was shown to be arrested an hour earlier.

9. The officials of NCB reached the residence of Bebo Ram, Choj, Manikaran, Kullu at about 05:45 a.m. on 06.11.2017. According to NCB, the petitioner opened the door and on enquiring identified himself. His room was searched and his wife and his son were also present in the room. Thereafter, a notice under Section 67 of the NDPS Act was served on him and according to NCB, his voluntary statement was recorded on that date.

10. He disclosed that he had come to Himachal Pradesh for the first

time in the year 2015 and had met Sh. Neel Chand of Choj Village and Purushottam @ Kalu of Malana. He stated that he was already a *charas* addict and knew that illicit trafficking of *charas* yields quick and hefty amount of money. He disclosed that he started buying *charas* from Neel Chand and Purushottam and selling the same to Shaunak, Vishwendra, Abbas and Samir of Mumbai. He stated that he did not know the exact address of the said persons, but they were residing in Andheri (West), Mumbai and they were his friends. He stated that on this occasion he had arrived in Kullu on 01.11.2017 and was staying in the house of Bebo Ram on rent at Choj Village of Kullu. He stated that he had bought half a kg of illicit *charas* from Neel Chand and Purushottam and he had sent one kg *charas* each from Kullu to Mumbai through Rafik and Guljar who were residents of Nagwain, District Mandi. The petitioner also disclosed that he had been using Rafik to carry the illicit consignment of one kg of *charas* which he had bought from Neel Chand and Purushottam @ Kalu. He stated that Rafik and Guljar worked as carriers for illicit trafficking of *charas* and also carry *charas* from Kullu to Mumbai. He stated that many people from Mumbai send orders for illicit *charas* from Kullu and Rafik and Guljar carry the same after purchasing it from Neel Chand and Purushottam.

11. He further stated that he used to deposit the money of illicit *charas* in the bank accounts of Neel Chand and his son Ramesh Kumar. He also disclosed the bank accounts of Neel Chand and his son Ramesh. He also furnished the mobile numbers of Rafik, Neel Chand, Purushottam and Guljar. He also disclosed the full name of

Abbass as Abbass Zawwae Hussain Sayyed and also disclosed his full address. Thereafter, NCB also issued notice under Section 67 of the NDPS to Ramesh Kumar (son of Neel Chand) and his statement was also recorded. Both the petitioner and Ramesh Kumar were arrested on 06.11.2017.

12. Another statement of the petitioner was recorded on 08.11.2017. In this statement, the petitioner allegedly disclosed that he had purchased 6.2 kgs of *charas*. 3.2 kgs had been purchased from Purusottam @ Kalu and 3 kgs from Neel Chand. He stated that out of the above, 2 kgs was supplied to Abbass and half kg was to be supplied to Gaurav at Delhi. 2 kgs was for petitioner and the balance was for one Hiten Sondhi of Goa. He stated that he used to pay money to Neel Chand and his family members in their bank accounts and whenever he visited in Himachal, he paid him hard cash. He stated for *charas* purchased from Kalu he would always sent money in cash via courier boys who would come from Mumbai to deliver the *charas*. The payment was made in advance for the next consignment. He stated that in all he had paid ₹40 lacs to Neel Chand in the last three years and about ₹20 lacs to Kalu Ram.

13. It is seen that the NCB's case rests largely on the disclosure statements made by Rafik and the petitioner. It is stated that both, Rafik and the petitioner, have since retracted from their statements. The question whether such statements are admissible has been referred to by the Supreme Court to a Larger Bench in *Tofan Singh v. State of Tamil Nadu: (2013) 16 SCC 31*. It is also well settled that even if such self-incriminating statements are accepted as admissible, they are

a weak form of evidence and can be used only to corroborate other evidence.

14. In the present case, it is submitted on behalf of NCB that there is other material evidence to convict the petitioner and his statements are corroborated. In particular, the NCB relies upon the bank statements of Neel Chand and his family members where certain funds are shown to have been deposited in cash. NCB also relies on CDRs of the calls between the petitioner and Neel Chand and the petitioner and Rafik.

15. It does not appear that the cash deposits in the accounts of Neel Chand or his family members have been identified to correspond with any of the transactions. Further, there is also no material to establish that the cash deposited in the accounts of Neel Chand and his family members at Mumbai or at Goa has been deposited by the petitioner. The learned counsel for NCB had stated that there are some entries which reflect cash deposits and mentioned the name Jay and this according to him would clearly establish that the petitioner had deposited some cash in the bank accounts. However, it is not disputed that the deposit slips which would indicate whether any deposits have been made by the petitioner or not, have not been collected.

16. It is also relevant to note that the petitioner, in his disclosure statement, had recorded on 06.01.2017 merely accepted that he had purchased 1 kg of *charas*. This does not correspond to the recovery made from Rafik. This Court had also noticed that the said statement had also mentioned names of other persons who were involved, namely, Gaurav, Abbass, Vishwendra, Samir and Shaunak. However,

apart from Gaurav, none of them have been arrayed as accused. It also does not appear whether any investigation has been done to ascertain whether they had been supplied any *charas* either by the petitioner or by Rafik.

17. It is material to note that Gaurav has been discharged. Although the petitioner has also allegedly disclosed that he had purchased half a kg of *charas* from Purushottam @ Kalu, he has not been arrayed as an accused in the complaint. It is contended that he could not be traced. Thus his involvement in this case also cannot be established. Although Neel Chand has been arrayed as an accused no. 7, he has not been arrested and he has been absconding.

18. It is, thus, seen that the sources for purchasing of *charas* disclosed by the petitioner have not been established, inasmuch as, Purushottam @ Kalu has also not been arrayed as an accused and Neel Chand is absconding.

19. Although it is claimed that the petitioner had purchased 6.2 kgs of *charas* that was recovered from Rafik, there does not appear to be any evidence to establish the payment of consideration for the said purchase either to Neelchand @ Neelu and Purshottam @ Kalu. The cash deposits made into the account of Neelchand do not correspond alleged purchase of 3.2 kgs. of *charas* after 01.11.2017.

20. Mr Bhandari, learned counsel appearing for the petitioner had submitted that although Ramesh S/o Neelchand was arrested but he has since been released by the court after examining the material available on record and his involvement in this case. Although the prosecution's case is premised on the basis that the petitioner is a

charas addict and that is a reason that he had engaged in the business of trafficking of drugs, there is no medical evidence on record to establish that the petitioner is a drug addict.

21. Considering the above, this Court is of the view that there are reasonable grounds to believe that the petitioner may be acquitted. Admittedly, the petitioner is not involved in any other criminal case and there is no reason to believe that he would commit a similar offence, if released. It appears to be the prosecution's case that the petitioner had begun dealing in drugs to feed his addiction. But, as noticed earlier, there is nothing on record to establish that the petitioner is a drug addict.

22. In view of the above, the present petition is allowed and the petitioner is directed to be released on bail on his furnishing a personal bond in the sum of ₹25,000/- with one surety of an equivalent amount to the satisfaction of the concerned Jail Superintendent/Trial Court/Duty Magistrate. This is also subject to the following further conditions:-

- a) the petitioner shall provide a contact number and ensure that he is reachable on it all times;
- b) the petitioner shall mark his presence before the concerned SHO of the local police station where he resides on first Monday of each calendar month;
- c) the petitioner shall telephonically report to the concerned IO on the first Monday of each calendar month and disclose his whereabouts;

- d) the petitioner shall ensure that he is available in all proceedings before the concerned court; and,
- e) the petitioner shall not try to contact any of the person named in his disclosure statement either directly or indirectly.

23. The petition is allowed in the aforesaid terms.

24. It is clarified that the observations made in this order are only *prima facie* and solely for the purposes of examining whether the petitioner ought to be released on bail. The Trial Court shall consider the complaint and evaluate the evidence uninfluenced by any observations or findings in this order.

VIBHU BAKHRU, J

SEPTEMBER 02, 2020
RK/MK

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