IN THE COURT OF SH. RAJESH KUMAR SINGH ,
SPECIAL JUDGE-NDPS/ASJ (SOUTH) SAKET COURTS, NEW DELHI

SC 7A/12/2012
7396/2016
DRI Vs. PARAMJIT SINGH GULATI ANR.

08.05.2019

Order on the bail application of accused Atul Kumar Aggarwal dated 24.07.2017

1. By this order I shall dispose of the third bail application of the accused Atul Kumar Aggarwal dated 24.07.2017. In the present case, charge was framed against him and the co-accused Parajit Singh Gulati by my Ld. Predecessor vide order dated 05.11.2014 for the offences u/s 29, 28 r/w Section 23,22 r/w Section 29 and Section 25 A r/w Section 29 of NDPS Act 1985. Additional complaint was filed by DRI on which additional charge was framed against both accused by me vide order dated 16.01.2019 u/s 22 (c) r/w Section 29, 23 (c) r/w Section 29 of NDPS Act 1985.

2. The matter is at the stage of prosecution evidence and 33 witnesses have been examined. It is contended by the applicant/accused that DRI is delaying the matter and it has failed to bring on record cogent and admissible evidence to prove the guilt of the accused. Reliance is placed on the judgment by Hon'ble Supreme Court in the matter of ***S. C. Legal Aid Committee representing under trial prisoners vs Union of India and others 1994 (6) SCC 731*** on the point of entitlement of the accused to bail on the ground of delay trial.

3. It is also stated that no contraband was recovered from the possession of the accused Atul Kumar Aggarwal or from his premises. The prosecution story hinges only on the presumption that the accused was also involved. The applicant was a G-card holder and he was working as a Customs House Agent (CHA) and he was dealing in the clearance of the cargo for export in regular course of his business. Prosecution wants to implicate him on the basis of seizure of five cheque books, some digital storage media, three mobile phones, one laptop, G-card ID, 44 rubber stamps of various firms, 20 HDPE bags containing some mehendi powder, glass bangles, mirrors, incense sticks, ladies purse, incense powder, vanity cases etc. As a G-card holder, the accused was supposed to possess these articles during the normal course of business. Till 2011 dealing in export and import of the alleged material was not prohibited. There was no abnormality in the amount being charged by the accused. His statement u/s 67 of NDPS Act cannot be relied upon. PW-1 Mr. Manoj Thakur stated that the accused had appeared before him on 19.07.2012 and his statement was recorded. The said statement has not been placed on record. There are other averments in the application which have also been made in the earlier bail applications.

4. DRI has opposed the bail application. I have considered the arguments of Ms. Mala Sharma, Ld SPP for DRI and Mr. K. Singhal Ld. Counsel for the

accused. In support of his arguments, Ld. Counsel for accused has relied upon 10 authorities including the judgment in S. C. Legal Aid Committee Case (supra).

5. It is not disputed that considering the charges for which the accused is facing trial, bar of Section 37 of NDPS Act 1985 applies against him and he has to satisfy twin conditions provided u/s 37 to get bail. This is his third bail application. He also needs to show that there is change of circumstance which entitles him to bail despite rejection of his two earlier bail applications.

6. In his appearances before this Court, the accused Atul Kumar Aggarwal has admitted that the documents regarding export of the consignments were recovered from his office. He stated that he was sending the consignment for the co-accused Parajit Singh Gulati and therefore it was natural for the documents to be found in his office. His contention is that he was not aware about any contraband in those consignments. In paragraph 5 of the application, he admits recovery of certain articles, documents and rubber stamps from his office. He claims that these articles were supposed to be in his possession being a CHA. When he was asked about articles such as bangles, Rachni Mehendi powder etc., he stated that he had supplied these goods to the accused Parajit Singh Gulati and the balance goods were lying in the godown of his father.

7. According to DRI, the accused Atul Kumar Aggarwal used to keep the goods described above for preparing consignments for exports. The accused Parajit Singh Gulati used to send his employee Parajit Singh Bedi @ Chotu who used to mix contraband in the goods kept by Atul Kumar Aggarwal or conceal the contraband in the goods kept by him. There are e-mail exchanges and various other evidence to link the two accused.

8. At this stage, it will not be proper to examine the evidence led by the prosecution minutely to see whether prosecution has been able to bring home the guilt of the accused. Some of the witnesses are still to be examined. The accused are not ready to make the statement that they do not wish to dispute the evidence which remains to be led by the prosecution and that matter be taken up for final disposal. The statement of one witness or a document cannot be read in isolation. The quality of evidence will be judged at the final stage and at that time the statement u/s 313 Cr. PC as well as the defence evidence, if any will also be considered.

9. In this case, the first consignment was seized on 16.07.2012 and the shipping bill was in the name of M/s Sagar Impex which was a fictitious firm. Rubber stamps of this firm were also recovered from the office of the accused Atul Kumar Aggarwal. As per the case of the prosecution, the accused Atul Kumar Aggarwal used to arrange IEC Code for export of the consignments. After interception of a consignment sent through M/s Durga International vide

shipping bill no. 5731834 dated 05.10.2011, he had been advised not to use this IEC code again. The goods used for concealing the contraband were recovered from the godown of the accused Atul Kumar Aggarwal. Even rubber stamps of banks were recovered from his office. There is no absolutely no explanation as to why he was keeping the rubber stamps of the banks. There is enough material on record to show the complicity of the accused Atul Kumar Aggarwal even if, no contraband was recovered from his possession or from premises under his control.

10. As far as the delay in trial is concerned, steps have already been taken to expedite the trial. Day to day hearing was conducted from 01.04.2019 to 30.04.2019. Matter is now listed on 17.05.2019 to conduct a review and to decide further course of action to complete prosecution evidence. The delay itself is no ground to ignore the bar of Section 37 of NDPS Act and to grant bail to the accused. In the matter of ***Union of India vs Ikram Khan and others Criminal Appeal No. 37/2000*** decided by Hon'ble Supreme Court on 13.01.2000, bail had been granted to the accused by Hon'ble High Court as he had been in custody for four years. Hon'ble Supreme Court cancel the bail holding that the mandate of Section 37 cannot be ignored at the time of granting bail. In the matter of ***Thana Singh vs CBI (2013) 2 SCC 590*** which is relied upon by Ld. Counsel for accused, the judgment in ***Supreme Court Legal Aid Committee case (supra)*** was considered and bail was granted to the accused

who was in JC for 12 years. Hon'ble Supreme Court also issue directions to expedite the trial of the case. However, it is to be noted that no observation was made by Hon'ble Supreme Court that in every case where the accused has remained in JC for considerable time, bail should be granted in a routine manner.

11. The accused was not simply acting as a CHA and his complicity in the crime is clearly visible. Therefore, the other judgments cited at bar by his Ld. Counsel do not benefit him. In view of above discussion, **the bail application of accused Atul Kumar Aggarwal is dismissed. Copy of this order be given dasti to Ld. Counsel for accused.**

(announced in the
open Court on
***08th May 2019*)**

RAJESH KUMAR SINGH

Digitally signed by RAJESH KUMAR SINGH
Date: 2019.05.09 10:33:31 +0530

(***Rajesh Kumar Singh***)
ASJ/Special Judge (NDPS Act)
South District, Saket