

**IN THE COURT OF MS. MONIKA SAROHA,  
SPECIAL JUDGE-NDPS/ASJ (SOUTH),  
SAKET COURTS, NEW DELHI**

**Zaka S. Zhimo**

S/o Sukhaje Zhimo,  
R/o 80/4, Humayupur, Safdarjung Enclave  
New Delhi

**Permanent address:-**

Village-Thahekhu  
PO Dimapur Sadar,  
Nagaland-797112

**.....Accused/Applicant**

Vs.

**DRI**

**.....Complainant**

Under Section : 8/23/24/25/27A/28 & 29 of NDPS Act

***Order on application seeking bail of accused Zaka S. Zhimo***

**ORDER**

Vide this order, I shall decide the bail application of the accused Zaka S. Zhimo.

1. Before dwelling upon the merits of this application it is important to mention the brief material facts and the proceedings which have taken place so far in this matter-:

a). On the basis of intelligence received and developed by DRI, the import consignment bearing airway bill no. 6851560623 at M/s DHL

Express New Courier Terminal IGI Airport was examined. On examination, this consignment was found booked from South Africa and destined to Madhu N. Asanuo, Safdarjung Village, New Delhi. This airway bill was described as traditional wear jewellery. Upon examining this consignment, besides other things, it was found containing 497 grams of off white creamish colour powder which was discovered to be *heroin* after chemical examination.

b). DRI officials then conducted follow up search and using one dummy box identical to the box from which heroin was recovered, a trap was laid to nab the person who was to receive this courier consignment. When the DRI official reached at H.No. 80/4 Humayupur Safdarjung Enclave, the accused Zaka answered the door. Upon inquiry, the accused Zaka admitted that he used to receive the parcel on behalf of one Eche and he had earlier also received such consignment on his behalf.

c). During further investigations, the residential premises occupied by accused Zaka was searched and his mobile phone etc. were also taken into possession. From the forensic examination of the mobile phone containing SIM no. 9366865902 it was revealed that this number was registered in the name of the accused only, in the customer application form (CAF). When the messages, whatsapp chats and browser history was taken out with respect to this SIM, it was revealed that the airway parcel no. 6851560623 was being regularly tracked from this number. The relevant OTPs were also being generated with respect to this

consignment from this SIM and that regular calls were made to DHL employees from this SIM only.

d). Further, it was found that the necessary KYC documents were also being uploaded from this SIM regarding the courier consignments in the name of Madhu N. Asanuo in the past also.

e). Further, it was revealed during investigation that Zaka was the tenant of one Lokesh Phogat since August 2019 and the documents i.e. rent agreement and aadhar card which were of the same premises in which accused Zaka was residing were submitted for clearance of the consignment which were forged. Also, it was revealed that the aadhar card which was uploaded had the name of Madhu N. Asanuo but the photo of the accused Zaka.

f). After sufficient material was found, the present complaint was filed against the accused Zaka for committing the offence of importing narcotic into India and other related offences.

2. The accused Zaka S. Zhimo in his bail application, seeks bail *inter-alia* on the following grounds :-

a). That no recovery was made from the applicant/ accused.

b). That the courier consignment was in the name of Madhu N. Asanuo and the accused had nothing to do with it.

c). That the accused was never in conscious possession of any contraband.

3. On the other hand, Ld. Special Public Prosecutor for DRI has vehemently opposed this bail application arguing that there is already sufficient material on record hinting at the guilt of the accused and considering the conditions contained in Section 37 of the NDPS Act, the accused is not entitled to bail.

4. On a consideration of the submissions that have been made by both the sides, without any observation on the merits of the trial in progress, this does not appear to be a fit case for grant of bail to the applicant/accused Zaka S. Zhimo at this stage.

5. Considering the evidence collected by DRI, this court is satisfied that the bar of Section 37 NDPS Act is indeed attracted in the present case and the accused must cross the hurdle of the twin conditions u/s 37 NDPS Act before he can be granted bail, besides satisfying the other criterion for grant of bail as provided in Cr.PC and several judgments on this issue.

6. Now the provisions of section 37 NDPS Act read as follows :-

*“37. Offences to be cognizable and non bailable.*

*(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) -*

*(a) every offence punishable under this Act shall be cognizable;*

*(b) no person accused of an offence punishable for offence under Section 19 or Section 24 or Section 27A and also for offences involving commercial quantity shall be released on bail or on his own bond unless-*

*(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and*

*(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is no likely to commit any offence while on bail.*

*(2) The limitations on granting of bail specified in clause (b) and sub-section (1) are in addition to the limitations under the code of Criminal Procedure, 1973 (12 of 1974), or any other law for the time being in force on granting of bail.”*

**In *Union of India vs. Rattan Malik @ Habul* decided by the Hon'ble Supreme Court, (Crl. Appeal No. 137 of 2009 arising out of SLP (Crl.) No. 1057 of 2008), the scope of section 37 of NDPS Act has been discussed as follows :-**

*“12. It is plain from a bare reading of the non-obstante clause in the Section and sub-section (2) thereof that the power to grant bail to a person accused of having committed offence under the NDPS Act is not only subject to the limitations imposed under Section 439 of the Code of Criminal Procedure, 1973, it is also subject to the restrictions placed by sub-clause (b) of sub-section (1) of Section 37 of the NDPS Act. Apart from giving an opportunity to the Public Prosecutor to oppose the application for such release, the other twin conditions viz; (i) the satisfaction of the Court that there are reasonable grounds for believing that the accused is not guilty of the alleged; and (ii) that he is not likely to*

*commit any offence while on bail, have to be satisfied. It is manifest that the conditions are cumulative and not alternative. The satisfaction contemplated regarding the accused being not guilty, has to be based on “reasonable grounds”.*

*13. The expression ‘reasonable grounds’ has not been defined in the said Act but means something more than prima facie grounds. It connotes substantial probable causes for believing that the accused is not guilty of the offence he is charged with. The reasonable belief contemplated in turn points to existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence. (Vide Union of India vs. Shiv Shanker Kesari). Thus, recording of satisfaction on both the aspects, noted above, is sine qua non for granting of bail under the NDPS Act.*

*14. We may, however, hasten to add that while considering an application for bail with reference to Section 37 of the NDPS Act, the Court is not called upon to record a finding of ‘non guilty’. At this stage, it is neither necessary nor desirable to weigh the evidence meticulously to arrive at a positive finding as to whether or not the accused has committed offence under the NDPS Act. What is to be seen is whether there is reasonable ground for believing that the accused is not guilty of the Act while on bail. The satisfaction of the Court about the existence of the said twin conditions is for a limited purpose and is confined to the question of releasing the accused on bail.”*

7. Thus, before enlarging the applicant on bail, this court must be

satisfied that there are reasonable grounds for believing that the applicant is not guilty of the offences charged with and that he is not likely to commit any offence while on bail. The entire material on record is to be broadly seen before entering such a satisfaction. It is in view of the seriousness of the offences under the NDPS Act that the legislature has knowingly put such stringent restrictions on the discretion of the court while deciding the bail pleas of those accused of offences under the NDPS Act.

8. The trial in this case is yet to begin with the case being at the stage of arguments on charge for which it is listed for the next date of hearing. The evidence cannot be appreciated in a piece-meal manner at this stage and complete credibility of the witnesses cannot be ascertained at this stage. However, at this stage it is sufficient to note that there is nothing to hold that the prosecution story is entirely a false one and the prosecution is likely to fail. Thus, this Court is unable to make any observation to the effect that there are reasonable ground for believing that the applicant/ accused is not guilty of the offence charged with.

9. It is nowhere denied in the bail application that the mobile no. 9366865902 was not in the name of the accused or was not being used by him. The material collected from his phone after forensic examination shows that this accused was making all efforts to collect the courier

consignment containing the contra band even though it was in the name of Madhu N. Asanuo. There is available on record statement of the landlord of the accused according to which the aadhar card and the rent agreement both showing his premises as the residence of Madhu N. Asanuo were never prepared by him. Further, the aadhar card which was uploaded for KYC of the courier consignment contains the photo of the applicant / accused. There is material to show that even in the past, the accused was involved in paying the custom charges for the consignments booked for Madhu N. Asanuo.

10. The accused has not explained how is he related to the said Madhu N. Asanuo, how his photograph is on the Aadhar card of said Madhu N. Asanuo and about the existence of rent agreement of his residence in favour of Madhu N. Asanuo.

11. Also considering the alleged manner of commission of offence and the commercial quantity involved, there is nothing before this Court to even record that the accused is not likely to commit a similar offence in future. There is no substantial probable cause before this Court at this stage, for believing that the accused is not guilty of the offence he is charged with. This Court is conscious of the fact that at this stage, it is not to record a finding of '*not guilty*', further, it is not required to weigh the entire evidence meticulously to arrive at a positive finding as to

whether or not the accused has committed offence under the NDPS Act. From the material on record at this stage, when the charges are yet to be framed, this court is unable to form a view that there are reasonable grounds for believing that the accused did not commit the offence for which this complaint has been filed.

12. At this stage, no microscopic examination of the evidence of the material on record so far can be done and only a broad over view / bird's eye view of the entire material before the court can be taken. Suffice it to say that from material on record so far, it does not appear that the prosecution case is without any merits and is likely to fall in all circumstances against accused Zaka.

13. During the course of arguments, Ld. Counsel for the accused relied upon the law as laid down in *Amit Ranjan Vs. NCB* by our own Hon'ble High court in Bail application no. 1189 of 2020 decided on 23.05.2022. However, in the said case, the only evidence against the accused Amit Ranjan was the disclosure of the co-accused and call detail record between him and the co-accused, however in this case at this stage, the prosecuting agency does not rely upon the call details between this accused and anyone else but rather on the forensic examination of the phone and the SIM used by the accused which SIM was duly issued in the name of this accused only. While, a CDR does not reveal the contents

of the conversation, however, in the present case the whatsapp chat history and the browser history clearly shows the accused uploading documents, doing KYC for the courier consignment and in possession of a fake rent agreement and Aadhar card, the creation of which has been denied by the landlord. Thus, the facts of the case and the strength of the prosecution, a document is completely different in the cited judgment and in the case at hand.

Thus, for reasons discussed above in detail, this bail application is **dismissed**.

Copy of the order be given dasti.

Announced in open court  
on 12<sup>th</sup> January, 2023

(Monika Saroha)  
Spl. Judge-NDPS/ASJ (South)  
Saket Courts, New Delhi/12.01.2023