

**IN THE COURT OF DR. HARDEEP KAUR,
ADDITIONAL SESSIONS JUDGE-02, NDD, PATIALA HOUSE
COURTS, NEW DELHI**

In IA No.4/24
Case No. 77/2023

State

Versus

Rahimullah Rahimi

... Applicant/Accused

**FIR No.237/2022
PS Special Cell
U/s 21/25/29 NDPS Act**

ORDER

1. Vide this order, this Court shall dispose of bail application filed on behalf of applicant/ accused Rahimullah Rahimi under Section 439 Cr.P.C. read with Section 483 BNSS read with Section 37 of NDPS for grant of regular bail.

2. It is submitted by the Ld. counsel for applicant/ accused that in the present case, there is no statutory compliance of the procedure prescribed u/s 52A of NDPS Act and hence, the entire seizure, sampling and testing exercise stands redundant and the violation of the mandatory provisions makes the seizure and testing procedure void in its entirety. It is further submitted that there is a gross violation of Section 50 NDPS Act as defective notice u/s 50 NDPS Act dated 03.09.2022 was served upon the applicant/ accused, at the site of the Kalindi Kunj Metro Station, as the words “Gazetted Officer” and “Magistrate” were not prefixed with the word “nearest” which amounts to an arbitrary exercise of

power by the IO.

3. It is further submitted that there is an evident discrepancy in the seals which were affixed upon the samples when the application under Section 52 NDPS Act was made and when the same samples arrived at the FSL, Rohini and as such present case is apparently is of tampering and planting of the narcotics. It is further submitted that when application u/s 52A NDPS Act dated 02.10.2022 was moved, the samples G-7 to G-12 were having the seal of AK, however as per the FSL report, the same samples were having seal of ADK upon them.
4. It is further submitted that on 03.09.2022, the recoveries near Kalindi Kunj Metro Station, SDMC Toll Booth were conducted by and under the supervision of ACP Lalit Mohan Negi, the seizure memos were prepared by him, but the officer who moved the application under Section 52A NDPS Act was a different officer namely ACP Hridaya Bhushan. ACP Hridaya Bhushan was neither an officer in charge of the police station nor he was empowered under Section 53 of NDPS Act.
5. It is further submitted that there are discrepancies in the statements of raiding team members recorded under Section 161 Cr.P.C. regarding GD Entry number and their departure time.
6. It is further submitted that there is no material evidence on record to show that the applicant/accused made any

commercial gains or carried on any monetary transactions with any of the accused persons which creates a reasonable doubt as to the involvement of the applicant/ accused in drug trafficking allegations.

7. It is further submitted that in the present case, police team has used private vehicles to carry out the raids and recoveries but failed to put on record the details of the said vehicles which also creates suspicion on the alleged recovery.
8. It is further submitted that there is no independent witness, CCTV footage with regard to arrest of applicant/accused and recoveries effected from his possession. It is further submitted that investigation is already complete; charge-sheet has already been filed in the court; applicant/ accused is in judicial custody since 03.09.2022 and yet charges have not been framed. There are 60 prosecution witnesses and hence, the trial in the instant matter is likely to consume considerable time and no fruitful purpose would be served by keeping him behind the bars. Applicant/ accused undertakes to abide by all terms and conditions which may be imposed by this Court while granting bail.
9. In support of his submissions, Ld. counsel for applicant/ accused has relied upon the judgments titled as *“Amina v. State NCT of Delhi, Bail Application no. 3805/2022 decided on 02.06.2022, Gopal Dangi v. State Govt. NCT of Delhi, Bail Appln. 3350 of 2023 decided on 15.07.2024, Gurpreet Singh v. State Govt. NCT of Delhi Bail Appln no. 857 of 2023 decided on 05.02.2024, Kashif Vs. Narcotics Control*

Bureau, Bail Appln. no. 253/2023 decided on 18.05.2023, UOI Vs. Mohan Lal and Anr., Crl. Appeal No.6521/2012 decided on 28.01.2016, Mohd. Jabir Vs. State of NCT of Delhi, Bail Appln. 1725/2022 decided on 28.03.2023, Mohd. Muslim @ Hussain v. State NCT of Delhi, SLP (Crl) No. 915 of 2023 decided on 28.03.2023, Mukesh Singh v. State SLP (Crl) no. 5648 of 2019 decided on 31.08.2020, Rohit v. Central Bureau of Narcotics, Crl. M. C. no. 1799/2020 & Crl. M. A. no. 12621/2020 decided on 11.12.2020, Sandeep @ Chiku v. State NCT of Delhi Bail Appln. no. 3016 of 2023 decided on 25.01.2024, Sheikh Javed Iqbal v. State of Uttar Pradesh Crl. A No. 2790/2024, Shivam v. State Govt. of NCT of Delhi, Bail Appln. no. 3312 of 2023 decided on 15.07.2024, Vishwajeet Singh v. State NCT of Delhi, Bail Appln. no. 3148 of 2021 decided on 28.02.2024, Yusuf @ Asif v. State, SLP (Crl) no. 3010 of 2023 decided on 13.10.2023, Dheeraj Kumar Shukla v. State of U.P, SLP (Crl) no. 6690 of 2022 decided on 25.01.2023, Badsha SK v. State of West Bengal, SLP (Crl) no. 9715 of 2023 decided on 13.09.2023, Man Mandal & anr v. State of West Bengal, SLP (Crl) no. 8656 of 2023 decided on 14.09.2023 and Rabi Prakash v. State of Odhisha, SLP (Crl) no. 4169 of 2023 decided on 13.07.2023.

10. Reply to the present application filed on behalf of the IO.

11. Ld SPP has vehemently opposed the bail application arguing that applicant/accused Rahimullah Rahimi is an Afghan national who alongwith co-accused Mustafa Stainkzai is indulged in supply of drugs in India. It is further submitted

that huge quantity of contraband drugs was recovered from the possession and at the instance of both the accused persons. It is stated that contraband recovered from the applicant/accused has been opined as Heroin and Methamphetamine and is commercial in quantity.

12. It is further submitted that during investigation all mandatory requirements for compliance with Sections 50, 52A and 53 of NDPS Act have been fully adhered to. So far as compliance regarding Section 52A CrPC is concerned, the first recovery of Heroin and Methamphetamine was made on 03.09.2022 at the instance of both accused persons (Marked as M and R, D-1 to D-9 and E-1 to E-7), recovery was also effected on 04.09.2022 of Heroin and Methamphetamine at the instance of both accused persons (G-1 to G-6, G-8, G-10 to G-12) and qua these recoveries, application for sampling u/s 52A NDPS Act qua samples marked as M, R, D-1 to D-9 and G-1 to G-6 on 05.09.2022 which was fixed by Ld. RMM on 09.09.2022. It is further submitted that on 05.09.2022, recovery of 592 bags of Silica were recovered from the godown at Lucknow (Mark K-1 to K-592) and on 08.09.2022, requisite application was moved for samples marked K-1 to K-592 and E-1 to E-7 which was fixed for 16th and 17.09.2022. It is further submitted that on 09.09.2022, proceedings u/s 52A NDPS Act was conducted, however, on 16.09.2022, fresh application was moved for re-fixing the date for proceedings as both the accused were not produced and thereafter dated 22.09.2022 and 23.09.2022 was fixed; on 22.09.2022, accused persons were not produced, therefore Ld. RMM fixed 30.09.2022 and

01.10.2022 for sampling. On 30.09.2022, Ld. RMM conducted proceedings u/s 52A NDPS Act from K-1 to K-200 and on 01.10.2022, Ld. RMM conducted proceedings qua samples K-201 to K-500; an application for sampling was also moved qua G-7 to G-12 and Licorice root container which was fixed by Ld. RMM for 02.10.2022. On 02.10.2022, Ld. RMM conducted the proceedings qua samples K-501 to K-592, E-1 to E-7, Licorice Root Container and G-7 to G-12. It is submitted by Ld. SPP that Ld. RMM conducted the proceedings u/s 52A NDPS Act on the scheduled dates and without any delay.

13. It is further submitted by Ld. SPP that description of samples G-7 to G-12 consistently identifies the seal as AK in both the sampling done by Ld. RMM on 02.10.2022 u/s 52A NDPS Act and the FSL report dated 06.09.2023 but inadvertently due to typographical error while drafting the supplementary charge-sheet, the seal was inadvertently mentioned as ADK instead of AK.

14. It is further submitted that the contention raised by Ld. Counsel for applicant/accused regarding GD entry and departure time is having no merit as GD Entry No. 0029A records the time of departure as 09:40:36 when the raiding was set to depart, however, subsequent to the directions by superior officers that Insp. Rajeev Srivastava would also join the raiding team, GD No. 35A was registered at 10:16 when the raiding team finally departed and hence, there is no discrepancy in any of the General Diary entries.

15. It is further submitted by Ld. SPP that absence of financial transaction does not absolve the accused from culpability in narco-terrorism and cannot serve as a valid ground for bail. It is further submitted that private vehicles alongwith one government vehicle was used for operational reasons and hence, use of private vehicles does not render the raid illegal in any manner.

16. It is further submitted that contraband recovered from applicant/accused is commercial in quantity and has been opined as Heroin and Methamphetamine. It is further submitted that applicant/accused is an Afghan national and there is every likelihood that applicant/accused may indulge in similar offence or may threaten or induce the witnesses if released on bail. It is stated that applicant/accused does not deserve bail in order to ensure his presence before this court during trial.

17. This Court has heard the rival submissions and also carefully perused the record and Case Diary produced by SI Sandeep during arguments on the present bail application.

18. **Briefly stated**, the facts of the present case are that on 03.09.2022, on the basis of source input, applicant/accused Rahimullah Rahimi and Mustafa Stainkzai, both Afghan nationals were apprehended from near Kalindi Kunj Metro Station alongwith car make Skoda bearing registration no. DL 13 CQ 7272. On taking search, 1.360 KG of Heroin was recovered from the said car at the instance of accused Mustafa Stainkzai and 1.040 KG of Heroin was recovered

from the dickey of said car at the instance of applicant /accused Rahimullah Rahimi. During investigation, both accused persons disclosed that recovered consignment of Heroin was to be delivered to a contact of their handler Haji Musa near Kalindi Kunj Metro Station, Delhi. During investigation, co-accused Mustafa Stainkzai also got recovered materials/items used for preparing drugs from his rented accommodation at H-block, Khadda Colony, Jaitpur, Delhi.

19. During investigation, pursuant to their disclosure statements, both the accused persons got recovered huge quantity of drugs i.e. nine bags containing 311.415 KG of Methamphetamine, 19.901 KG of contraband/Narcotic drugs, 608 bags containing white granular white powder. During investigation, one container of Licorice root was recovered at the instance of applicant/accused Rahimullah Rahimi from Panvel, Maharashtra which, on testing with the help of Narco field testing kit, indicated the presence of narcotic drugs. During investigation, it was revealed that the aforesaid container received in Mumbai on an Import Export Certificate in the name of M/s Sandhu Exports, proprietor of which accused Manjeet Singh has also been arrested who also revealed the names of several kingpins of Narco-terrorism in India operating inside and outside India who had a secret meeting for spreading terrorist activities in India to expand illegal trade of narcotic drugs to finance terror activities.

20. Charge-sheet against accused Rahimullah Rahimi and

Mustafa Stainkzai was filed on 28.02.2023. During investigation, co-accused Rajinder @ Ganja and Jujbir @ Jajj were arrested on 06.04.2023 and supplementary charge-sheet was filed against them on 03.07.2023. FSL result has been obtained qua contraband including Licorice root recovered at the instance of applicant/accused Rahimullah Rahimi and co-accused Mustafa and as per the FSL result, the same have been opined to be Heroin and Methamphetamine.

21. During arguments, Ld. Counsel for applicant/accused submitted that he is not pressing arguments qua non-compliance of Section 50 of NDPS Act.

22. In the present case, both the accused persons got recovered huge quantity of drugs, as detailed above, at their instance. The recoveries so effected are of commercial quantity.

23. This Court has placed reliance upon the judgment titled **Somdutt Singh @ Shivam v. NCB, Bail Appln. 2754/2022** decided by Hon'ble High Court of Delhi wherein the Hon'ble High Court of Delhi has dealt with the order of **Kashif (supra), Tamir Ali v. NCB 2023 SCC OnLine Del 3015** and **Sarvothaman Guhan v. NCB Bail Appln. no. 2879/2022** and **Crl. M. A. No. 19629/2022** decided on **13.09.2023** wherein from Kashif and Tamir, there was no recovery and from Sarvothaman Guhan, the recovery was not of commercial quantity but in the present case, the recovery of commercial quantity is effected at the instance of applicant/accused and not from his possession. So far as

compliance of Section 52A NDPS Act is concerned, perusal of record as well as the Case Diary clearly suggests that there is no delay in compliance of Section 52A of NDPS Act and the dates which have been mentioned in the reply of IO has also been reflected in the Case Diary.

24. So far as compliance of Section 53 of NDPS Act is concerned, as per the Case Diary dated 04.09.2022, ACP Lalit Mohan Negi has authorized ACP Hriday Bhushan to conduct further investigation. The contention of Ld. Defence counsel qua seals on samples G-7 to G-12 is concerned, perusal of sampling order dated 02.10.2022 of Ld. RMM u/s 52A of NDPS Act reveals that the pulandas mark G-7 and G-8 to G-12 were sealed with the seal of AK and even samples so drawn were also sealed with the seal of AK. The FSL result dated 06.09.2023 also mention the seal of AK on samples G-7 to G-12. In reply to the present bail application, the IO stated that in supplementary charge-sheet, due to inadvertent typographical error, seal has been wrongly mentioned as ADK instead of AK. Hence, the contention raised by Ld. Defence counsel has no merits

25. So far as contention raised by Ld. Defence Counsel regarding GD entry and departure time is having no merit as GD No. 35A was registered on 03.09.2022 at 10:16 when the raiding team finally departed and hence, there is no discrepancy of any kind in the General Diary entries. During the course of arguments, copy of GD No. 35A was supplied to Ld. Counsel for applicant/accused.

26. Since there is recovery of commercial quantity of contraband, accordingly, at this stage, it cannot be said that there are reasonable ground to believe that accused is not guilty of offence and is not likely to commit the offence again. There is definite bar of Section 37 of NDPS Act. It is true that the effort, if any, made by the prosecution to have the search conducted in the presence of the independent witnesses would be tested during the course of trial and the same may not be fatal to the case of the prosecution.

27. The judgments relied upon by Ld. Defence counsel are distinguishable from the facts of the present case.

28. Accordingly, bail application of applicant /accused Rahimullah Rahimi stands dismissed.

29. Needless to say that nothing observed herein shall have a bearing upon the merits of the case.

30. Application is disposed off accordingly.

31. Copy of this order be given dasti.

**Typed to the dictation directly,
corrected and pronounced in the
open Court on 16.11.2024.**

**(Dr. Hardeep Kaur)
Additional Sessions Judge-02
New Delhi District, New Delhi**