

Atul Aggarwal Vs. Dri

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Court : Delhi

Decided On : Jun-30-2015

Judge : Sunita Gupta

Appellant : Atul Aggarwal

Respondent : Dri

Advocate for Pet/Ap. : Mr. S.S. Dass

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI Date of Decision:

30. h June, 2015 + BAIL APPLN. 2149/2013 ATUL AGGARWAL Through:
Petitioner Mr. S.S. Dass, Advocate versus DRI Through: Respondent
Mr.Satish Aggarwal, Advocate CORAM: HON'BLE MS. JUSTICE SUNITA GUPTA

ORDER

: SUNITA GUPTA, J.

1. By virtue of this application under Section 439 of Cr.PC the petitioner is seeking regular bail in Sessions Case No.47A/12 DRI vs. Paramjit Singh Gulati & Atul Aggarwal.

2. The case of Directorate of Revenue Intelligence [DRI]. in brief is that while acting upon a secret intelligence regarding a Delhi based drug syndicate engaged

in export of narcotic drugs by way of concealment thereof, the DRI officers seized a consignment of about 151.980 kg of white colour crystal powder from the area of Air Cargo, IGI Airport, New Delhi on 18.07.2012. The above consignment of white colour crystal powder was being exported to Malaysia and it was contained in three particular cartons/boxes bearing nos.19, 21 and 21, which further contained 38 cloth bags each weighing around 1.02 kg each and was a part of a big consignment consisting of 24 such corrugated boxes/cartons contained in three pallets. The secret information was that a consignment of drugs is being exported by concealment thereof in various handicraft items like lady purse, hina powder and imitation jewellery etc. and the above seized cloth bags i.e. 38 cloth each contained in the above three cartons were found to be having the marking of Neha Rachni Mehendi.

3. The further investigation led the DRI team to the co-accused - Paramjit Singh Gulati and the present applicant/accused - Atul Aggarwal, as it was found that the above export consignment was being exported by the above co-accused Paramjit Singh Gulati, as per the shipping documents seized in this case. The DRI officers had conducted simultaneous searches at various premises of both the accused persons and from the residential premises at G-48, Man Sarovar Garden, New Delhi of co-accused - Paramjit Singh Gulati, they had recovered two different pouches marked as EPH and PSE weighing 25.5 gms (gross weight) and 24.5 gms (gross weight) respectively containing some white colour crystalline powder, a cash amount of Rs.1,57,30,000/-; 13 mobile phones of various brands and some documents. Two godowns of the above main/co-accused situated at G-41 (basement), Bali Nagar, New Delhi and at Khasra No.755/1/1 at Mundka Village, Delhi were also raided and from the first godown also 215 gms of white colour crystalline powder and further a cash amount of Rs.3,50,000/- was recovered. From the second godown, some solutions of rose water, liquid glucose, etc. with suspected Ketamine¹ dissolved therein were recovered with drums of refined glycerine, ethyl acetate, etc.

4. As far as the petitioner - Atul Aggarwal is concerned, the recovery of five (5) cheque books of various accounts, some digital storage media, three mobile phones, one laptop and 44 rubber stamps of various firms was effected from his

residence at D-99, Gali No.5, South Ganesh Nagar, New Delhi and one G-Card ID was also recovered from his other residence at 178, 1st Floor, Street No.8, West Guru Angad Nagar, New Delhi and 20 HDPE bags containing some mehendi powder, glass bangles, mirrors, agarbattis, ladies pouch purses, incense powder and vanity cases etc. was also effected from his godown premises situated at A-36, Kundan Nagar, Delhi.

5. During the tests conducted by the CRCL, New Delhi subsequently, the samples taken out of the above seizure of suspected Ketamine effected from the Airport, Cargo Complex were found positive for ketamine 1 [Ketamine, categorized as a dissociative anesthetic, is used in powdered or liquid form as an anesthetic, usually on animals. It can be injected, consumed in drinks, snorted, or added to joints or cigarettes. Ketamine was placed on the list of controlled substances. Short- and longterm effects include increased heart rate and blood pressure, nausea, vomiting, numbness, depression, amnesia, hallucinations and potentially fatal respiratory problems. Ketamine users can also develop cravings for the drug. At high doses, users experience an effect referred to as K-hole, an out of body or near-death experience. Due to the detached, dreamlike state it creates, where the user finds it difficult to move, hydrochloride. The samples taken from the white crystalline powder recovered from the two bags from the residence of co-accused at Mansarovar Garden, Delhi have been found positive for ephedrine hydrochloride and pseudoephedrine hydrochloride, the samples taken from the first godown of the co-accused was also found positive for ephedrine hydrochloride and the samples taken from the above rose water solutions etc. found in the second godown of the above co-accused was also found positive for ketamine hydrochloride.

6. The bail of the petitioner is being sought on the ground that no recovery of any contraband substance has been effected from his possession or at his instance. Neither he is the owner of the contraband in question nor the supplier of the same nor did he has anything to do with the recipient of the contraband in question. He was not to receive any share in the dealing of drugs. He is only engaged in the work of export as he is a G-Card holder of customs and doing the work of custom house agent. He had acted as a freight forwarder in processing of paper work for

export of consignment as per the directions of exporters. The godown and premises from where the alleged recoveries were effected do not belong to the petitioner/accused nor he has any concern with such recoveries. Till 2001, dealing in ketamine was ketamine has been used as a date-rape drug - dissociative anesthetic: a drug that distorts perception of sight and sound and produces feelings not an offence and no provisions of the NDPS Act was attracted. The officers of DRI tortured and forced the petitioner to write a statement as per their will and the said statement was retracted at the earliest available opportunity. The co-accused has not even mentioned a word against the petitioner. The petitioner is languishing in jail since July, 2012 for no fault of his own. In similar circumstances, Court has granted bail to co-accused - Suresh Kumar Sharma, as such, it is prayed that the petitioner also deserves to be released on bail.

7. The application is opposed by Mr Satish Aggarwal, counsel for DRI on the ground that the petitioner is trying to misguide the Court by presenting himself to be only a freight forwarder. In his voluntary statement recorded under Section 67 of the NDPS Act, the petitioner has admitted his role in the export of contraband to various countries. He himself has submitted the list of exports made by him. He also confirmed the fact that he used to receive Rs.2 to Rs.3 lacs per consignment for his involvement in the export of contraband. The role of the petitioner was to procure the material for concealment and thereafter concealing the contraband therein which ultimately was exported to various countries. The recovery of concealment material i.e. mehendi powder, glass bangles, mirrors, agarbattis, ladies of detachment (dissociation) from the environment and self.], pouch purses, incense powder and vanity cases from the premises under control of the petitioner was similar to the concealment material used for concealment of 151.98 kg of ketamine which was placed under seizure at the IGI Airport. The recovery of IECs of various firms from the premises of the petitioner and his admission that the same were being used by him and his co-accused for export of contrabands clearly establishes his role in the offence. His role is further established from his revelation about the export of 300 kgs of Ketamine concealed in the consignment of Tert Butanol. Based on revelations by the petitioner, the Canadian authorities were alerted which resulted in recovery of the contrabands at Canada. The recovery of the documents pertaining to the said consignment from the custody of

the petitioner reinforces his involvement in commission of crime. The petitioner in his statement also admitted that for the purpose of export of 151.980 kgs of Ketamine he had forged letter from ING Vysya Bank Limited certifying bank account of Sagar Impex / Fabricated Income Tax return, verification for (ITR - V) of Rahul Raj, Proprietor of M/s Sagar Impex / fabricated balance sheet for the year ending 30.03.2011 of Mr Rahul Raj and generated fake registration certificates of Department of Labour, Govt. of NCT of Delhi and forged bank statements of Sagar Impex. The petitioner had admitted that he himself forged the said documents as the same were required for entering of AD code (authorized dealer) for Custom Clearance at Air Cargo Complex, Delhi. The admissions made by the petitioner in his statement and his co-accused have also resulted in seizure of one more consignment of 300 gms of Ketamine dissolved in rose water at the godown premises which was also to be exported by them. This clearly establishes the fact that he (the petitioner) was knowingly concerned in acquiring, possessing, keeping, transporting, concealing, sale and purchase and illegal export of contraband and psychotropic substances and by act of omission and commission on his part has committed various offences. Regarding the plea of the petitioner that till 2011 Ketamine was not a controlled substance under NDPS Act, 1985 it was submitted that after pronouncement of Supreme Courts Judgment in Union of India and another vs. Sanjeev V. Deshpande, [Crl. Appeal No.660 of 2007, decided on 12.08.2014]., this contraband is now covered under NDPS Act and, therefore, the petitioner is not entitled to be released on bail.

8. As per the case of prosecution, pursuant to searches made by the officers of DRI, 20 HDPE bags containing concealing materials like mehandi powder, glass bangles, mirrors, agarbattis, ladies pouch purses, incense powder and vanity cases etc were recovered from the godown premises of the petitioner. It is not in dispute that the consignment was being exported through the petitioner and G-Card ID was also recovered from his other residence. His statement under Section 67 of NDPS Act was recorded which is admissible in evidence and if proved to be made voluntarily can even be the basis of conviction wherein it is disclosed by him that the consignment of Ketamine procured by the co-accused Paramjit Singh Gulati was first sent to the godown of the petitioner at A-36, Kundan Nagar, Delhi where contraband was concealed and repacked. He has also stated that he used

to charge a hefty amount of Rs.2 lac to Rs.3 lac for sending each of such consignment. Besides that, various shipping documents for export of the consignment prepared in the name of M/s Sagar Impex at New Delhi and IEC Codes were recovered which were found to be fake. It was also disclosed in the statement that by the same mode, earlier 1,000 kgs of contraband was exported and one of their consignments declared to be chat masala, exported to Canada, was intercepted by the Canadian Authorities and a further consignment of 300 kg of Ketamine to Canada was also sent. Forged rubber stamps of various firms were also recovered from the residential premises of the petitioner/accused which reflects his involvement in such cases of export of consignment by using fake stamps of different firms/companies.

9. It is the case DRI that pursuant to an information received from the accused persons, the DRI officials had passed the information to Canadian Authorities and they have seized the consignment of about 300 kgs of Ketamine.

10. Moreover, the effect of retraction of the statement made under Section 67 of the NDPS Act will be required to be seen during the trial of the case. Various judgments relied upon by counsel for the petitioner / accused are on the peculiar facts and circumstances of each case from which the petitioner does not derive any benefit. Furthermore, the position of law has been materially altered in view of the pronouncement of judgment in Sanjeev V. Deshpande (supra).

11. Keeping in view the totality of facts and circumstances, coupled with the fact that the case is at its initial stage as only charge has been framed and prosecution is yet to lead its evidence, at this juncture, I do not deem it appropriate to release the petitioner on bail. The application is accordingly dismissed. It is, however, made clear that the observations made hereinabove will not affect the Trial which should be conducted on its own merit. The application stands disposed of accordingly. (SUNITA GUPTA) JUDGE JUNE30 2015/rd