

**IN THE COURT OF ASJ/SPECIAL JUDGE/NDPS  
PATIALA HOUSE COURTS, NEW DELHI**

**Presided by: Sudhir Kumar Sirohi, DHJS**  
**NCB Vs. Sarbpreet Singh**  
**Crime No. VIII/07/DZU/2021**

**SUDHIR KUMAR SIROHI**  
Special Judge NDPS Act  
Room No. 35, P. Building  
Patiala House Courts,  
New Delhi

09.05.2023

Present: Mr. Arun Khatri, Ld. SPP for NCB with Ld. counsel

Mr. Akshay Kumar Dahiya.

Mr. Aditya Aggarwal and Ms. Kajol Garg, Ld.  
counsels for applicant.

Further arguments on bail application of the accused  
heard.

The regular bail applicaiton of accsued has been  
dismissed by Hon'ble High Court of Delhi in Bail Application  
no. 1559/2022 on 15.12.2022 and thereafter, the another bail  
application was filed by the accused before the Hon'ble High  
Court of Delhi bearing Bail Application no. 350/2023 dated  
15.03.2023 in which the applicant was given liberty to raise the  
contravention of standing order 1/88 dated 15.03.1988 before the  
trial court and after that the present bail application has been  
filed.

Brief facts of the case are that on receiving the secret  
information regarding a parcel found to be illegally exported to  
Canada lying at DHL office at Rama Road, Kirti Nagar. The  
NCB team reached and during search and seizure proceedings  
found the name of the consignor and sender as Sarbpreet Singh  
and consignee Jagjeet Singh. The said parcel contained two  
boxes of Dabur Chyawanprash, two boxes of Shama Badam  
Prash, one box of Baidyanath Kesari, two bottles of Kalonji tel



black seed oil 120 ml and three small boxes of Afresh energy drink, herbal life nutrition 50 gm. On opening Dabur Chyawanprash, it was discovered that seal of box was broken and both the boxes gave positive result for opium weighing around 1.7 kg. The two boxes of Shama Badam Prash also gave positive result for opium and total weight was found 1.690 kg. Thereafter on opening Baidyanath Kesari Kalp chyawanprash gave positive result for opium weighed around 430 gm. In total, there is a recovery of 3.820 kg of opium. During investigation it is found that accused Sarbpreet Singh has given the said parcel to one Mr. Deepak Singhi for booking and the same fact is corroborated through mobile connectivity. It is also revealed during investigation that accused Sarbpreet Singh was tracking the parcel through mobile no. 9815320170. Accused Sarbpreet Singh in his statement stated that he prepared the said parcel and handed over to Deepak Sanghi. Prosecution also recorded the statement of Deepak Sanghi who stated that he had booked the said parcel and accused had brought these articles at his shop. The CRCL report gave positive result for opium. On completion of investigation, complaint was filed.

The sole contention raised in the present bail application is that the sample are drawn in violation of standing order 1/88 dated 15.03.1988. It is further argued by the Ld. counsel for accused that two boxes of Dabur Chyawanprash were mixed and put in a polythene packet Mark A (weight 1.700kg), two boxes of Shama Badamprash were put into a polythene packet Mark B (weight 1.690 kg), one box of Baidyanath Kesrikalp Royal Chaywanprash were put in a polythene packet Mark C (weight 430grams) and from these mark A, B and C, the

samples were drawn. It is further argued that the homogeneous sampling which has been drawn in this matter is not in consonance with the law laid down by Hon'ble High Court of Delhi in the bail application titled as *Laxman Thakur Vs. State* *Bail Appl. no. 3233/2022 decided on 14.12.2022*. It is further argued by the Ld. counsel for accused that sampling u/s 52A NDPS Act is on the basis of wrong mixing and the samples drawn in this matter are not representative samples and are in violation of standard procedure prescribed under order no. 1/88. It is further argued by Ld. counsel for accused that only sampling of pullinda Mark C is as per standing order 1/88 and the weight of the same is 380grams while the commercial quantity of opium is 2.5grams, therefore, only the intermediate quantity of opium has been recovered in this matter. It is further argued by Ld. counsel for accused that accused is in custody since 10.08.2021 and is not involved in any other matter, therefore, bail may be granted to accused.

Ld. counsel for accused relied upon following judgments/orders:-

1. *Babu Bhai Vs. State of Gujarat & Ors. (Crl Appeal No. 1599/2010 decided on 26.08.2010 Hon'ble Apex Court.*
2. *Laxman Thakur Vs. State bail application no. 3233/2022 Hon'ble High Court of Delhi*
3. *Ahmed Thakur Vs. State Bail Appl no. 3076/2020 by Hon'ble High Court of Delhi*
4. *Basant Rai Vs. State Crl. Appeal No. 909/2005 by Hon'ble High Court of Delhi*
5. *Charlse Howell@Abel Kom Vs. NCB CRL.A. 755/2016 decided on 13.08.2018 by Hon'ble High Court of Delhi*





6. Edward Khimani Kamau Vs. The NCB  
*MANU/DE/1748/2015*
7. Gopal Das Vs. NCB in Bail Appl No. 3491 of 2020 by  
*Hon'ble High Court of Delhi.*
8. Sachin Kumar Vs. State (Govt. of NCT of Delhi) bail  
*Application No.557/2023 decided on 26.04.2023 by  
Hon'ble High Court of Delhi.*

Ld. SPP for NCB on another hand opposed the bail application and submitted that the bail application of accused has already been dismissed by Hon'ble High Court of Delhi. It is further argued by Ld. SPP for NCB that standing order 1/88 has been followed in this matter and in the standing order no. 1/88 it has been mentioned where the package/container are identical in size and weight bears identical marking, contents of each package are similar in colour, texture and give identical result by test kit therefore they can be bunched together. It is further argued by Ld. SPP for NCB that in this matter before putting the contents of 2 boxes of Dabur Chaywanprash and two boxes of Shama Badamprash in separate polythene, they were tested with field test kit and were found positive for opium. It is further argued by Ld. SPP for NCB that one box of Baidyanath Chyawanprash were put in a separate polythene and the same also give positive test for opium, therefore, this shows that whole of recovery was containing opium and correctly bunched together by the officials of NCB in compliance of order no. 1/88, therefore, the accused may not be admitted to bail as there is recovery of commercial quantity of contraband in this matter.

Submissions of both the parties heard. Judgments/orders perused. The liberty was granted to the accused to raise the contention of homogeneous mixture before the Trial Court and thereafter the present application has been filed.

In the *Laxman Thakur (supra)* it was held by Hon'ble High Court of Delhi:-

*"7. The judgment of Sumit Tomar (supra) has been duly considered by the Coordinate Bench of this Court titled in a judgment titled as „Santini Simone vs. Department of Customs“ [2020 SCC OnLine Del 2128] and relevant paras read as under:*

*"57. In Sumit Tomar v. State of Punjab, (2013) 1 SCC 395, the Court was examining the case where according to the prosecution, two plastic bags containing „bhooki“ opium powder were recovered from the dickey of the car. The contents of both the bags were mixed and two samples of 250 grams each were taken out. The remaining contraband weighing 69.5 kgs were sealed in two bags and the samples were sent to Forensic Science Laboratory for examination. It was contended on behalf of the appellant that the procedure followed by the concerned seizing officials was irregular and the alleged contraband could not be mixed and the samples taken thereafter. It was contended that since the punishment is based on the quantity of contraband recovered, mixing of substances from two bags was unacceptable. The said contention was rejected. The Court held that merely because different punishments have been prescribed depending*



59. In  
on quantity of the contraband, the same has not caused any prejudice to the appellant. The Court reasoned that even after taking two samples of 250 grams each, 69.5 kgs of contraband was still available.

58. In *Amani Fidel Chris (supra)*, four brown colour packets were allegedly recovered. The said packets contained powdery substances, which on being tested, yielded a positive result for heroin. The substances were then mixed properly and weighed with the help of an electronic machine and it was found that the same weighed 1.5 kgs. Thereafter, two samples of 5 grams each were drawn from the recovered substance and put into zip lock pouches. It was contended that the procedure adopted was not permissible. The procedure of transferring the contents of all four packets into one and then drawing a sample from the mixture had caused a serious prejudice, as it could not be ascertained whether the four packets contained the alleged narcotic. The Court found that the procedure adopted fell foul of the Standing Order No. 1/88 dated 15.03.1988 issued by the Narcotics Control Bureau (which was *pari materia* to Standing Order 1/1989 dated 13.06.1989, issued by Department of Revenue, Ministry of Finance, Government of India). The Court held that where more than one container/package is found, it is necessary that samples be drawn from each separate container/package and be tested with a field-testing kit. If the container/packages are identical in shape, size and weight then lots of 10 or 40 container/packages may be prepared. Thereafter, representative samples from each container/package be drawn.



59. In *Basant Rai (supra)*, a Coordinate Bench of this Court considered a case where the accused was allegedly found carrying a polythene bag, containing eight smaller polythene bags, containing a brown colour substance, which was alleged to be charas. The Investigating Officer had taken small pieces from each packet and mixed the same and thereafter, drawn two samples which were sent to FSL for analysis. The Court found fault with the said procedure and allowed the appeal. The Court held as under:

"25. After hearing both the learned counsel for parties and going through the Trial Court Record, I find force in the submission of learned counsel for appellant. Admittedly, the samples were drawn after breaking small pieces from 08 of the polythene bags which were allegedly kept in a green coloured bag by the appellant in his right hand. The IO prepared two samples of 25 grams each after taking a small quantity from each of the slabs.

26. Though the settled law is that if it is not practicable to send the entire quantity then sufficient quantity by way of samples from each of the packets of pieces recovered should be sent for chemical examination. Otherwise, result thereon, may be doubted.

27. For example, if the 08 packets were allegedly recovered from the appellant and only two packets were having contraband substance and rest 6 packets did not have any contraband; though all maybe of the same colour, when we mix the substances of all 8 packets into one or two; then definitely, the result would be of the total quantity and not of the two pieces. Therefore, the process adopted by the prosecution creates suspicion. In such a



situation, as per settled law, the benefit thereof should go in favour of the accused. It does not matter the quantity. Proper procedure has to be followed, without that the results would be negative."

60. In *Edward Khimani Kamau (supra)*, a Coordinate Bench of this Court rejected the procedure where the substance found in nine packets was transferred into one packet and two samples were drawn from the same. The Court held that it could not be ascertained that all nine packets contained heroin.

61. In *Charlse Howell @ AbelKom (supra)*, the NCB had allegedly recovered 330 grams of heroin. The powder recovered was packed in 166 polythene strips, which were concealed in the laces/hem of two lehengas. The concealed powder from the 166 strips was collected in a transparent polythene and on weighing, it was found to be 330 grams. Two samples of five grams were drawn and put separately in zip lock polythene pouches. A Coordinate Bench of this Court following the decision of the Supreme Court in *Union of India v. Bal Mukund*, (2009) 12 SCC 161, held that the procedure adopted was not in conformity with the Standing Order 1/88 dated 15.03.1988, issued by the Narcotics Control Bureau."

8. I am of the view that as mandated by the Hon<sup>ble</sup> Supreme Court in judgment of „*Union of India vs. Bal Mukund & Ors.*“ [(2009) 12 SCC 161], standing order 1/88 has been opined to be a "requirement of law".

9. The 3 Bench judgment of *Bal Mukund (supra)* is binding on this Court.



10. Relevant portion of Standing order 1/88 reads as under:

"2.4 In the case of Seizure of a single package/container, one sample (in duplicate) shall be drawn. Normally, it is advisable to draw one sample (in duplicate) from each packet/container in case of seizure of more than one package/container."

11. The standing order 1/88 mandates that the transferring of content of all packets into one and then drawing a sample from the mixture is not permitted.

12. I am of the view that in the present case, the instructions in 1/88 has not been followed and the sample has been drawn after mixing the contents of various packets into one container. The same has caused serious prejudice to the case of the applicant. Since the collection of sample itself is faulty, the rigours of Section 37 of the NDPS Act will not be applicable.

The Hon'ble High Court of Delhi has clearly dealt with the judgment of Sumit Tomar in the aforesaid order.

In the present matter, there is recovery of two boxes of Dabur Chyanwanprash (weight 1.700kg), two boxes of Shama Badamprash (weight 1.690kg) and one box of Baidyanath Kesrikalp Chyanwanprash (weight 430grams). The samples were drawn from mixing two boxes of Dabur Chyanwanprash and two boxes of Shama Badamprash, therefore, as per the aforesaid judgment & standing order 1/88, the samples were not the representative samples as there is likelihood that either one of the Dabur Chyanwanprash or Shama Badamprash was not having opium. The third sample was drawn from single box of



Baidyanath Kesary Royal Chyanwaprash (weight 430grams) and 430grams is not the commercial quantity of opium, therefore, even if the sample from Baidyanath Kesarikalp Royal Chyanwanprash was correctly drawn then also the same is below commercial quantity. As per standing order 1/88 the transferring of contents of all packets into one and then drawing a sample from the mixture is not permitted.

2.4 of standing order 1/88 states that *"in the case of seizure of a single package/container, one sample is duplicate shall be drawn. Normally, it is advisable to draw one sample (in duplicate) from each package/container in case of seizure of more than one package/container "*

Accordingly, the samples were drawn in this matter after mixing the contents of various packets into one and the same has caused prejudice to the applicant and that homogeneous sample was sent for 52A NDPS Act proceedings therefore, when the collection of sample is itself faulty then the rigours of 37 NDPS Act will not be applicable. The applicant/accused was arrested on 10.08.2021 and is not involved in any other case therefore, in the present fact and circumstances, the applicant/accused Sarbpreet Singh is admitted to bail on following terms and conditions:-

- i. The applicant/accused shall furnish a personal bond and a surety bond in the sum of Rs. 50,000/- with two sureties of like amount,
- ii. The applicant/accused shall provide his mobile number to the Investigating Officer (IO) concerned, which shall be kept in working condition at all times.

iii. The applicant shall not switch off, or change the same without prior intimation to the IO concerned, during the period of bail;

iv. The applicant/accused shall report to the office of NCB on the first Monday of every month;

v. In case the applicant/accused changes his address, he will inform the IO concerned and Court;


vi. The applicant/accused shall not leave the country during the bail period and surrender his passport, if any, at the time of release before the I.O. concerned, if the applicant does not have passport then to file affidavit.

vii. The applicant/accused shall not indulge in any criminal activity during the bail period;

viii. The applicant/accused shall not communicate with, or come into contact with any of the prosecution witnesses, or tamper with the evidence of the case.

The observations made hereinabove are only for the purpose of deciding the bail application and will have no bearing on the trial. The application is disposed of in the above terms. Copy of this order be given dasti.



  
(Sudhir Kumar Sirohi)  
ASJ/Spl. Judge, NDPS/N. Delhi  
09.05.2023