

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **Bail Appl.No.1139/2008**

% **Date of decision : 04.08.2008**

Jullien Kanoui Petitioner
Through: Mr.S.S.Das, Advocate.

Versus

Narcotics Control Bureau Respondent
Through : Mr. Rajesh Manchanda, Advocate.

CORAM :-

* **HON'BLE MR. JUSTICE ANIL KUMAR**

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to the reporter or not? | NO |
| 3. | Whether the judgment should be reported in the Digest? | NO |

ANIL KUMAR, J.

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This is an application under Section 439 of the Criminal Procedure Code by the petitioner, a French national seeking interim bail for the period of at least six months on the ground that he is a case of HIV Positive and for the special treatment he requires interim bail for the said period.

The petitioner has also filed another petition being Bail Application No.673/2008 for regular bail under Section 439 of the Criminal Procedure Code.

The petitioner has contended that he is facing trial before Special Court, NDPS in the case titled NCB Vs. Rakesh Kumar & Ors. According to the petitioner on 31st January, 2007, NCB had recovered 870 grams of charas from a Wagon-R bearing registration No.DL-9CA-5859 which was under the possession of accused No.2, Sarvesh Bhatia. The officers of NCB also recovered around 1210 kgs of hashish from a godown at village Holambi Kalan, Delhi which was also under the exclusive possession of Sarvesh Bhatia.

The petitioner has contended that Sarvesh Bhatia when first examined on 31st January, 2007 did not state anything against the petitioner. The petitioner contended that he was forcibly lifted by the officers of NCB and he was tortured to give the statement.

The petitioner has contended that he was in the business of export of furniture from India to Belgium and he was only sending the furniture. He said that he has no knowledge about the concealment of

the drugs in the container which was not booked and reserved by him. Nothing incriminating was concealed in any piece of the furniture.

The petitioner has asserted that the co-accused Sarvesh Bhatia was tortured and induced by the officers of the NCB to implicate the present petitioner. The petitioner has further contended that he was not involved with the recovery of 1210 kgs of hashish from Belgium and in respect of alleged recovery from containers neither the statement of applicant implicate him nor the statement of co-accused Rakesh implicates the petitioner.

The bill of lading for the container caught at Belgium was given by Sarvesh Bhatia. The petitioner is neither a shipper nor the exporter nor the receiver of the said bill. The container which was recovered at Antwerp, Belgium was booked by Sarvesh Bhatia. The statement of Mr.Virender Syal representative of David Cornet International also does not implicate the petitioner. The respondent has not produced anything to show the connection of the petitioner with the consignee of the container, as owner or director or any other relationship except the admission of the petitioner that he was appointed as an agent to procure the furniture by the consignee of the bill of lading.

The container from which the drugs were recovered at India was also booked by the accused Sarvesh Bhatia and not by the petitioner. Sh.Rakesh, a co-accused in his statement dated 1st February, 2007 has indicated that the container was unloaded a month ago as per instruction of Sarvesh Bhatia and the container belonged to one L.D. Three persons namely Sharmaji, Nafi Bhai and Dahul, all muslims came to Delhi from Mumbai seven days prior to arrival of the container and he had received them from the Railway Station and left them in the godown at the instance of Sarvesh Bhatia and those three persons remained in the godown and a week before 1st February, 2007 they left for Mumbai. According to Rakesh Kumar, another co-accused, the said three persons packed the charas and they concealed the packets in the container. The co-accused Rakesh Kumar also stated that Sarvesh Bhatia exports charas to foreign countries after smuggling it from Nepal. Mr.L.D who alleged to have owned the container and Rakesh Kumar has not named petitioner in any manner.

The petitioner has also contended that he was taken in custody on the night of 31st January, 2007 when he was leaving India on the intervening night of 31st January and 1st February, 2007. He was picked up and kept in the custody till 3rd February, 2007 and then shown to be arrested on 3rd February, 2007. Copies of the air tickets

and Visa are also produced by the petitioner in his application for bail in support of his contentions.

By order dated 6th June, 2008, keeping in view the medical record of the petitioner, the jail authorities were directed to shift the petitioner to Ram Manohar Lohia hospital under the protective custody of the police and the police men who had to accompany the petitioner were directed to be in plain clothes and the French Embassy was allowed to offer any medicine to the petitioner.

Pursuant to order dated 3rd July, 2008 in bail application No.673/2008 Ram Manohar Lohia hospital was directed to give a report about the condition of the petitioner especially about the ramification of petitioner having very high HIV viral load. The hospital was also directed to indicate the treatment administered to the petitioner and whether the treatment available is adequate considering his condition and his illness.

A report dated 12th July, 2008 was sent by the Deputy Director of Dr.Ram Manohar Lohia hospital indicating that the viral loads indicates that the HIV virus in the body of the petitioner is worse and it was further opined that the petitioner is not responding to the treatment

and the viral load will start increasing and very high levels of viral load shall be detrimental to the health of the petitioner and his condition may deteriorate very fast which may become life threatening. The report by Dr.Professor S.C.Sharma of the petitioner is as under:-

“Mr.Julian Kanoui (35 years, Male) is suffering from HIV infection and is under regular follow up in ART clinic in Dr.Ram Manohar Lohia Hospital, New Delhi, vide NRID No.29/08. He has been admitted in Dr.Ram Manohar Lohia Hospital in past for various problems. Now he is admitted in Ward No.VIII, bed No.15, vide CR No.24455 w.e.f 24/06/2008. He is having HIV infection in advanced stage and is on ART since 1996. When he attended Dr.Ram Manohar Lohia Hospital, he had failed to respond to first line ART regimen and was already on second line drugs like, lopinavir/retonavir, Fosemprenavir, Tenofavir. He failed to these second line drugs also and then was put on latest drug “Darunavir” which is not available in India and he is getting it from France through French embassy. These drugs are also not available in our National AIDS Control Programme. In spite of these drugs he has clinical failure and virological failure and he is getting opportunistic infections like, herpes zoster, candidiasis infection and diarrhea. His viral load has increased substantially to about 1,97855 lacs copies per ml. Viral load indicates the amount of HIV virus in the patient’s body, higher it is, worse it is. On ART treatment the viral load should become undetectable in the body. If the patient is not responding to treatment or is failing to the treatment, the viral load will start increasing and very high levels as in this patient are very detrimental to the health of the patients and he will deteriorate very fast and get various opportunistic infections again, which may be life threatening. Now this patient needs genotype testing for HIV virus to ascertain to which medicine the patient has failed and to which medicine he is going to respond. The facilities to this test are not available here. Moreover the medicines which he will require will not be available here when he has failed to latest drug like Darunavir. He has also chronic hepatitis C infection which makes the case very complicated for management, as to start its treatment we need to control HIV viral load.

It is apparent that the condition of the patient is deteriorating due to drug resistance and treatment failure. We don't have facilities to investigate and treat the extensive prior treatment experienced patients like Mr. Julian Kanoui."

The learned counsel for the petitioner in the circumstances contend that the petitioner is entitled to be released on bail at least for six months.

The learned counsel for the respondent has opposed the grant of even interim bail on medical grounds on the ground that the recovery of the drugs from accused No.2, Sarvesh Bhatia is 1210 kgs and he has stated about the involvement of the petitioner that he used to arrange the drug from neighboring countries and he used to clear the sample of drugs. The learned counsel asserted that there is grave apprehension that the petitioner may flee from the jurisdiction of this Court. According to him the petitioner is a part of the drug syndicate considering the substantial quantity of the drugs involved.

Ms. Aliance Tullon is present on behalf of French Embassy and she has produced a letter dated 30th July, 2008 from Jérôme Bonnafont, The Ambassador, indicating that the travel documents of petitioner, Jullien Kanoui, shall not be issued for his travel to leave the Country without the prior permission of the Court. The said letter is taken on record.

In the facts and circumstances, the petitioner is entitled to be released on interim bail on the medical grounds. Therefore, the petitioner is released on interim bail for a period of four months from the date of his release subject to his furnishing a personal bond of Rs.1.00 lakh with one surety of the like amount to the satisfaction of the trial Court. The petitioner shall surrender his passport, if not already surrendered. The petitioner shall not leave this country without the prior permission of the trial Court. However, for leaving the jurisdiction of this court for travel within India for treatment or for any other purpose relating to his illness, the petitioner shall intimate the trial Court in advance. The petitioner shall appear before the trial Court on the dates of hearing unless exempted by the trial Court. A copy of this order be sent to the Embassy of France so that they may take note of the fact that the petitioner has been admitted to bail on the terms and conditions mentioned herein above and may comply with the representations made by the Ambassador of the France in his letter dated 30th July, 2008. With these directions, the petition is disposed of.

Dasti, under the signature of the Court Master.

August 04th , 2008.
‘K/Dev’

ANIL KUMAR, J.