

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

+ **BAIL APPL. NO.27/2011**

**Date of Decision : 30.05.2011**

**SATNLEY CHIBUIKE**

**.....Petitioner**

Through: Mr.Haneef Mohd., Adv.

Versus

**STATE GOVT. OF NCT OF DELHI**

**..... Defendant**

Through: Mr. M.N.Dudeja, APP

**CORAM :**

**HON'BLE MR. JUSTICE V.K. SHALI**

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not ?
3. Whether the judgment should be reported in the Digest ?

**V.K. SHALI, J. (Oral)**

1. This order shall dispose of the present bail application filed by the petitioner in respect of an FIR no.68/2009, u/S 21(b)/29 of NDPS Act and u/S 14 of the Foreigner Act registered by P.S. Special Cell, NR.
2. I have heard the learned counsel for the petitioner as well as learned APP for the State.
3. The contention of the learned counsel for the petitioner is that the petitioner has been in custody since 17.12.2008 and for the last two years, only six witnesses have been examined and secondly, it has been contended that the parcel which was booked and purportedly contained the contraband item was actually booked by Ms.M.Naik while the prosecution case was that it was booked by the wife of the petitioner Smt.Ritu.

4. It is stated that M.Naik has neither been cited as a witness nor examined till date. At the time when the parcel was booked, the documents for identification proof of M.Naik were found on record along with the parcel and the case of the prosecution that the parcel was booked by Smt. Ritu is completely belied.
5. It has been contended that even PW-4, Mr.Pawan Kumar who was examined has clearly stated that the packet which was handed over to him was not in a sealed condition. Therefore, the possibility of the sample being tampered with, cannot be ruled out. So far as the case of the prosecution is concerned, it is stated that the parcel which contained the books and the contraband, the name of the addressee as well as sender was written on a separate piece of paper while as when the recovery was effected, it has been found that there was no separate piece of paper affixed on the parcel, instead the name of the receiver and the sender was written on the parcel itself.
6. The learned counsel has tried to take advantage of the purity of the contraband by urging that keeping in view the purity of the contraband of the total quantity cannot be said to be of a commercial in nature and consequently, the petitioner deserves to be enlarged on bail. The learned counsel for the petitioner has placed reliance on the bail order passed by the learned Single Judge of this Court in Bail Appl.No.957/2010

titled **Odidika Innocent Osita Vs. NCB** to contend that in case there is a possibility of parcel being tampered with the accused deserves to be enlarged on bail.

7. As against this, the learned APP has vehemently opposed the bail application of the petitioner. It has been contended that the petitioner is a part of a well entrenched syndicate dealing with the drugs and contraband and their export. It is also stated that apart from the fact that the petitioner did not have the valid travel documents to stay in India. The passport was stated to have been lost while as he had no Visa to stay in India.
8. So far as the question of identification of the person who booked the parcel is concerned, it has been stated that although the documents show that the parcel is purported to have been booked by M.Naik but there seems to be some discrepancies on that score because the wife of the petitioner has specifically made a statement under Section 164 Cr.P.C. which has been duly proved, during the course of the trial that it was at the instance of the present petitioner, that she had booked two parcels containing contraband on 06.12.2008 and 08.12.2008. In the light of this statement of Smt.Ritu who was admitted to be in live-in-relationship with the petitioner, recorded by the learned Magistrate under Section 164 Cr.P.C., it is stated that the contradiction which is sought to be seen by the learned counsel for the petitioner

with regard to the identification of the person who booked the parcel is only illusory.

9. It is contended by the learned APP that the trial is at an advanced stage and therefore, if at all the petitioner is released on bail at this stage, he is likely to go underground or evade the appearance before the Court and, therefore, it is not a fit case for grant of bail.
10. I have considered the respective submissions and have also gone through the Trial Court record. At the outset, it must be stated that the learned counsel for the petitioner has made an incorrect statement during the course of submissions. It has been stated in the application as well as during the course of submissions that only six witnesses have been examined so far, while as the record of trial court that shows that 19 witnesses have already been examined and the matter is listed for 1<sup>st</sup> and 2<sup>nd</sup> June, 2011 for the purpose of recording of further evidence.
11. I have perused the order sheets of the trial Court and it seems that the learned Special Judge is cognizant of the fact that the petitioner is in custody for the last two years and therefore, every effort is being made by him to expedite the trial.
12. So far as the question of identity of the person who is purported to have booked the parcel is concerned, the plea of the learned counsel is that it was booked by M.Naik and her

documents of identification are attached to the parcel, are insignificant on account of the fact that admittedly Smt.Ritu was having in 'live in relationship' with the present petitioner, she has categorically made a voluntary statement under Section 164 Cr.P.C. before the Judicial Magistrate to the effect that it was 'she' who at the instance of the present petitioner sent books by way of two parcels, to two different persons in UK which was handed over to her by the present petitioner. This statement under Section 164 Cr.P.C. has been duly proved and has been recorded and exhibited by the learned Judge.

13. In the light of this statement, the question as to whether the statement of Ritu under Section 164 Cr.P.C. is to be believed or not as to whether the plea of the learned counsel for the petitioner for identification of the person who had booked the parcel is other than Ritu and the consequent effect thereto, is essentially falls into the domain of appreciation of evidence which cannot be done at this stage of consideration as to whether the bail is to be given to the petitioner or not. I feel that at this stage, this Court cannot go into this aspect of the matter as it would be prejudicing the merits of the case by appreciating the evidence.

14. I have also gone through the order passed by the learned Single Judge of this Court in Bail Appl. No.957/2010 titled **Odidika Innocent Osta Vs. NCB** where bail was granted to

him. Merely on account of the fact that the bail in a particular case has been granted to a foreigner on the ground that in a case of NDPS Act does not ipso facto entitles the petitioner to bail in the present case. In the said case, the High Court had found various discrepancies in the testimony as well as the reason for tampering with the sample and consequently, considering the cumulative effect of the same, it had granted the benefit of discretion in favour of the petitioner.

15. As against this, in the present case, I am of the considered view that at the advanced stage of the case when substantial number of witnesses have already been examined, it will be pre-judging the entire case by going into minute dissection of the evidence and their appreciation of evidence. Suffice, it would be here to mention that Ritu admittedly had a live in relation with the present petitioner and has testified against him on oath and there is absolutely no reason to prima facie disbelieve her testimony, so far as the booking of the parcel at the instance of the present petitioner are concerned. Therefore, I feel that these minor variations with regard to the hand writing of the petitioner appearing on the slip while as finally name appearing on the envelope itself, the so called tampering with the parcel are questions to be dealt with at the stage of final decision in the case and not for the ground of consideration of bail.

16. Keeping in view the totality of circumstances and the stage at which the trial is placed, I feel that if the discretion is exercised in favour of the petitioner, he is going to flee from the processes of law. Accordingly, in my opinion it is not a fit case where the petitioner deserves to be enlarged on regular bail. However, the learned Special Judge will make every endeavor to complete the recording of prosecution evidence as expeditiously as possible.
17. With these directions, the bail application of the petitioner is dismissed. Expression of any opinion may not be treated as an expression on the merits of the case.

**MAY 30, 2011**  
**RN**

**V.K. SHALI, J.**