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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 5303 OF 2024**

Ejike Kelvin Ezech @ Kevin
@ Mike Ubama s/o Raphael ...Applicant

V/s.
Union of India & Anr. ...Respondents

**WITH
CRIMINAL BAIL APPLICATION NO.1386 OF 2025**

Nakirijja Alice Alias Elizabeth
D/o Vincent Katwara ...Applicant

V/s.
Union of India & Anr. ...Respondents

Mr. Dilip Mishra i/b Mr.Ayaz Khan for the Applicant in BA
No.5303/2024.
Mr. Khushal Parmar and S. More for the Applicant in BA No.1386
2025.
Ms. Megha Bajoria, Spl.P.P. for Respondent No.1-UOI.
Mr. H. J. Dedhia, APP for the Respondent-State in BA No.5303/
2024.
Mr. R. M. Pethe, APP for the Respondent-State in BA No.1386/
2025.

**CORAM: SHYAM C. CHANDAK, J.
DATED : 22nd JULY, 2026**

P.C. :-

1. The Applicants seek their release on bail in Special Case No.297 of 2022 arising out of file No.DRI/MZU/INT-103/2023 of Directorate of Revenue Intelligence for the offence punishable under Sections 8(c) r/w 21(c), 23(c), 27A, 28, 29 & 30 of the

Narcotic Drugs and Psychotropic Substances Act, 1985 (for short “NDPS Act”).

Respondent DRI has opposed the Applications with the separate Affidavits of Kumar Ambrish, Dy. Director Intelligence, DRI Mumbai Zonal Unit.

1.1 Applicants Ejike Kelvin Ezech @ Kevin @ Mike Ubama s/o Raphael and Nakirijja Alice Alias Elizabeth D/o Vincent Katwara are the original Accused Nos.3 and 2 respectively. Hereinafter, they are being referred to as A3 and A2, for short.

2. Heard learned Counsel for the parties. Perused the record.

3. The prosecution case, in brief, is that on 17.08.2023, intelligence was received by the Respondent-DRI that Accused No.1- Salty Thomas (A1) would arrive at CSMI Airport, Mumbai on 18.08.2023 by Ethiopian Airlines Flight ET640 from Addis Ababa, carrying concealed narcotics. Acting on said information, when the A1 arrived at CSMI Airport on 18.08.2023 at about 02:10 hours, a DRI team intercepted A1 in the presence of independent panchas. On examination of a brown bag carried by A1, three packets containing total 1496 grams of cocaine was found in it. The said contraband and the travel documents of A1 were seized recording a Panchnama. During further investigation, the DRI recorded a statement of the A1 under Section 67 of the NDPS Act, therein, he disclosed that the bag containing the cocaine packets was handed over to him at Addis Ababa by Ms.Jennifer, on the instructions of Ms.Sofia, who had contacted him through WhatsApp. He further disclosed that he was instructed to deliver that cocaine to A2 – an African lady, near Hotel Sapna Residency

at about 2200 hours on the same day, in exchange for a cash payment of Rs. 1,35,000/-.

4. Thereafter, intelligence was also received to the DRI in respect of A2 which was similar to the information given by A1. Therefore, on 18.08.2023, between 21.00 hours to 22.00 hours, DRI team intercepted A2 at the aforesaid hotel. At that time, A2 was carrying a white bag. Upon checking the bag, the DRI found cash amount of Rs. 1,35,000/- in the bag. Said cash was seized and Panchnama of that action was recorded. On 19.08.2023, the DRI Officer recorded a statement of A2 under Section 67 of the NDPS Act, therein, she disclosed that she was directed by one Mr. Emma, a Nigerian national, to collect the bag containing cocaine from A1 in exchange for the aforesaid cash amount and a commission of Rs. 5,000/-, and thereafter to hand over that bag to Mr. Emma or his associates. Consequently, both A1 and A2 were arrested on 19.08.2023.

5. It is the further case of the prosecution that, on 14.09.2023, the DRI received intelligence inputs indicating that the final recipient of the seized cocaine was A3, a Nigerian national residing in Delhi, who was allegedly a key member of the syndicate involved in the contraband seized from A1. The intelligence gathered further suggested that certain evidence relating to the present case might have been kept at the aforesaid premises of A3. Said information was duly recorded. Thereafter, on 16.09.2023, the DRI team proceeded to Delhi and visited aforesaid premises. A3 was found present there. The team then conducted a search in that room. Six SIM cards and three mobile phone handsets were found in the room while conducting the search. Two mobile phones were found in the possession of A3 during his personal

search. Therefore, A3 was taken into custody by the DRI officers at Delhi, where, his statement was recorded under Section 67 of NDPS Act. Thereafter, transit remand was obtained and A3 was brought to Mumbai, where his further statement came to be recorded. Statements of A3 disclosed his complicity in the crime.

6. Further, the DRI officer recorded the statement of witnesses and seized necessary travel documents. Investigation revealed that, A3 had aided smuggling the said cocaine into India by booking air ticket for A1 and sending him money from India.

7. On completion of investigation complaint was filed against the accused persons. The trial Court declined to release the Applicants on bail. Therefore, the Applicants are before this Court.

8. Mr.Parmar, learned Counsel for A2 submitted that, as alleged, on 18.08.2023, A1 had divulged about the involvement of A2 and, he had also given her name and description. Thereafter, on 18.08.2023 itself the DRI officer had received the alleged intelligence about A2 that, on the same day, at about 22.00 hours, she would come near the said hotel. However, the age and height of A2 recorded in that intelligence was not provided by A1. Without having sufficient description of A2, it was not possible for the DRI team to identify A2 at the said hotel and accost her. Yet, the DRI officer concerned has not explained as to on what basis the DRI team identified A2 as the same African lady referred in the statement of A1. This makes the prosecution's claim doubtful that, at the relevant time, A1 had disclosed about the involvement of A2 in the crime, she was found at the said hotel, the DRI team identified her and finally, apprehended her alongwith the bag and seized cash of Rs.1,35,000/- from the possession of A2. Except the inadmissible statements of A1 and A2, there is no other evidence

against A2 showing that she was to act as the mediator to deliver the contraband to the intended person. Mr. Parmar has highlighted that A2's statement was recorded after taking her into custody. This circumstance indicate that the statement A2 was extracted by exerting pressure. Therefore, A2 is entitled for bail.

9. Now turning to the submissions made by Mr.Mishra, learned Counsel for A3. Mr. Mishra submitted that both A1 and A2 had not referred about A3 in their statements under Section 67 of NDPS Act. Admittedly, the alleged intelligence about involvement of A3 in this crime was received one month after the arrest of A1 and A2. Therefore, the Respondent's claim that intelligence was received against A3 is baseless. Mr. Mishra further submitted that, although it is the prosecution's case that an amount of Rs.3,500/- was transferred in the bank account of A1 by A3 through the witness Anil Gupta, relevant bank account statement of Anil Gupta is not produced to show that his bank account was debited by Rs.3,500/- on that day. He submitted that, as alleged, A3 had booked the air ticket of A1 through witness Manoj Kohli who had collected photocopies of passport of A1 and A3 for the purpose of booking the air ticket for A1. However, no separate seizure was recorded while taking said photocopies in charge by the DRI officer. The Respondent contends that after booking the air ticket, its soft copy was found in the mobile of A3 and its print was taken from there. But, the source of receiving the soft copy of the ticket is not identified. All this makes the Respondent's claim hollow that A3 had aided the smuggling of the cocaine. As such, A3 is innocent and deserves his enlargement on bail.

10. In contrast, Ms.Bajoria, the learned Spl.P.P. submitted that there is close proximity of time in the chain of the events, such as,

booking of the air ticket for A1; sending the ticket *via* an email to A1; transfer of cash Rs.3,500/- in the bank account of A1; boarding the flight by A1; leaving the flight from Addis Ababa; arrival of the flight at Mumbai. The witnesses Anil Gupta and Manoj Kohli have supported the chain of events. Thus, the said circumstances and the statements of the witnesses corroborated the statements of A1 to A3 recorded under Section 67 of NDPS Act. There is significant consistency in the statements of A1 to A3. As such, there is a clear case against A2 and A3 that they had conspired with A1 and the wanted accused to smuggle the cocaine. Therefore, bail be refused to both accused.

11. I have considered these submissions. There is substance in the submissions made by Mr. Parmar that in his statement A1 had only given the name of A2 and, further stated that A2 would be present near the said hotel with a white carry bag containing cash Rs.1,35,000/-. Whereas, in the intelligence note about A2, not only her name but her age and height is also mentioned. Nevertheless, in the light of the material on record said inconsistency is not sufficient to reject the contention of Ms. Bajoria about involvement of A2 in the instant crime. Because, A1 was suppose to execute the said delivery on the basis of the description of A2 provided to him by Ms. Sofia. As per his statement under section 67 NDPS, he was informed by Ms. Sophia that 'One lady with African ethnicity named Ms. Alice alias Elizabeth with white carry bag in her hands will be waiting near Hotel Sapana Residency, Juhugaon Vashi'. A1 himself was not aware of the true identity of A2. Therefore, the apprehension of A2 was to be conducted on the basis of the limited description and clues given by A1 and the intelligence note. Besides, there are more reasons to disagree with the submission by Mr. Parmar that

A2 was innocent. First in line is the fact that, on the same day of arrival of A1, the contraband was to be delivered to A2, at 22:00 hours, near the said hotel. Police had no knowledge of the said fact. Secondly, A2 was the lady of African ethnicity, as informed by A1 she was having a white carry bag and possessing the amount matching with the amount which A1 was to get for carrying the contraband. A2 has not explained as to why she had come near the said hotel, how she had got the amount of Rs.1,35,000/-, i.e., whether some third person gave it to her or through a proper foreign exchange and, why she had carried that amount. Therefore, I am of the view that there is a *prima facie* case against A2 of having conspired for smuggling the cocaine.

12. In so far as A3 is concerned, it is true that A1 or A2 had not disclosed A3's involvement in the crime. However, pursuant to the intelligence received in respect of A3, when the DRI team searched the place where A3 was residing, six sim cards and three mobile phones were found in his room. Two mobile phones were also found on his person. It is not the case of A3 that he was engaged in some business or activity necessitating the use of such mobile phones and SIM cards.

13. Secondly, it is pertinent to note that A1, A3 and witness Manoj Kohli, through whom the air ticket of A1 was booked, were not acquainted with each other. In such circumstances, it was not probable that A3 would tell Manoj Kohli to book the air ticket for A1. However, as disclosed by Manoj Kohli, A3 got that ticket booked through him and caused him to send it to A3 by an email. If there was no oblique motive, A1 himself would have booked his ticket without third person's help. The fact that Manoj Kohli had booked the said ticket at the instance of A3 is well supported with

the photocopies of the passport of A1 and A3 produced by Manoj Kohli which he had taken when A3 had told him to book the air ticket for A1. Said fact is also supported with the photo of the passport of A1 found in the mobile phone seized from A3.

14. There was no reason for Manoj Kohli to make a false statement against A3. Additionally, it is a matter of record that the travel ticket sent by Manoj Kohli through an e-mail, tallies with the details mentioned in the boarding pass seized by the DRI team from the possession of A1. This cannot be a coincidence.

15. Record indicates that, an amount of Rs.3,500/- was sent by A3 to A1, through the witness Anil Gupta. In addition, certain transaction receipts of fund transfer to A1 by A3, details of A1's bank account, portrait selfies of A1, photographs of A1's passport were also found in the personal mobile phone of A3 seized from his possession by the DRI officer. Considering the material as a whole, it appears that, A3 used to manage, facilitate and co-ordinate with other syndicate members to smuggle contraband in a hidden manner. A3 also used to fund A1 to travel and smuggle the contraband for money. In view of these circumstances, it appears that A3 was also involved in the conspiracy to smuggle the contraband into India through A1 and wanted to deal with it in a hidden manner involving third person like A2.

16. The conspectus of aforesaid discussion is that there is a strong *prima facie* case against A2 and A3 of having committed the present offence of smuggling 1496 grams Cocaine. There is nothing on record to state that there are reasonable grounds for believing that the A2 and A3 are not guilty of the alleged offence. Considering the conduct of the both these accused, it cannot be said that they will not commit any offence while on bail. Therefore,

rigors of section 37 of the NDPS Act are attracted against them with full force.

17. As a result, both the Bail Applications fail and liable to be rejected. Bail Applications stand rejected, accordingly.

18. By way of abundant caution, it is clarified that the observations made hereinabove are confined for the purpose of determination to the entitlement for bail and they may not be construed as an expression of opinion on the guilt or otherwise of the Applicant and the trial Court shall not be influenced by any of the observations made hereinabove.

(SHYAM C. CHANDAK, J.)