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

+ **Date of Decision: 03.03.2015**

% **BAIL APPLN. 257/2015**

MANOJ KUMAR

..... Petitioner

Through: Mr. S.S. Das and Mr. Sharshwat  
Panda, Advocates

versus

DIRECTOR OF REVENUE INTELLIGENCE ( THROUGH  
VIKRAM SINGH)

..... Respondent

Through: Mr. Satish Aggarwala, Advocate

**CORAM:**

**HON'BLE MR. JUSTICE VIPIN SANGHI**

**VIPIN SANGHI, J. (OPEN COURT)**

1. This bail application has been preferred under Section 439 Cr PC by the petitioner – being the second such application. The first application preferred by the petitioner was permitted to be dismissed as withdrawn with liberty to move the trial court. Upon moving the trial court, the application for bail was rejected by the trial court on 26.11.2014.

2. As per the case of the prosecution, the petitioner along with the co-accused Rakesh Arora were apprehended red handed while making delivery of the pseudoephedrine – which admittedly is a controlled substance, to the other co-accused, an African national called Anthony Okolo. On the disclosure of the petitioner and the co-accused Rakesh Arora, further

recovery of 183 kgs. of pseudoephedrine in different forms was made. Indian currency 11,99,000/-, US dollars 210 and Dinars 2045 were also recovered from the possession of the co-accused Rakesh Arora. The samples of the substance recovered tested positive for pseudoephedrine, though some of the samples tested negative.

3. The submission of learned counsel for the petitioner is that he was merely an employee of Rakesh Arora, the co-accused, who was the kingpin. The petitioner was merely acting on the instructions of his employer. Learned counsel submits that Section 37 of the Narcotic Drugs and Psychotropic Substances Act (NDPS Act) is not applicable in the present case, since pseudoephedrine is not a narcotic substance. He submits that the petitioner has been in custody since the date of his arrest, i.e. 02.05.2013. Learned counsel submits that this Court in the decision in *Niranjan Jayantilal Shah v. Directorate of Revenue Intelligence* decided on 19.11.2013 (Bail Appl No.1202/2013) had granted bail to the accused, where the recovery of the same controlled substance had been made of 100 kgs. This decision referred to had relied upon several other earlier decisions of the Court, where recovery of much larger quantities of controlled substance have been made.

4. In *N.C. Chellathambi v. Narcotic Control Bureau* (decided on 20.04.2005 in Bail Appln No.216/2005), one ton of ephedrine was recovered. In *Ajay Aggarwal v. Narcotic Control Bureau* (decided on 20.01.2005 in Bail Appl No.2036/2004), 1600 litres of acetic anhydride was recovered. In *Rajiv Kumar @ Sukha v. State of Punjab* (decided on 06.03.2009 in Crl Misc No.27654/2008), 25 kgs powder ephedrine

hydrochloride was recovered. In *Faiyaz Ahmed Rasool Shaikh v. Union of India* (decided on 05.05.2011 in CrI Appl No.165/2011), 93 kgs of ephedrine was recovered, and in *Chakrapani Dutt v. State, CDJ 2006 HDC 528*, 100 litres of acetic anhydride was recovered. In all these cases, the accused had remained in custody for varying periods of time.

5. The application is opposed by the respondent. The respondent has filed its reply. The submission of learned counsel for the respondent is that the Supreme Court did not grant bail in the similar matter of *Satish Vijay @ Bunt v. Intelligence Office, DRI, Hyderabad* while dismissing the Criminal Appeal No.9650/2013 on 20.01.2014.

6. A perusal of the said order shows that the accused had been in custody for nearly a period of one year. The Supreme Court directed the Special Court to make all endeavour for early completion of the trial – preferably within a period of four months from the date of receipt of copy of the order. It further directed that if for any reason the Special Judge is not in a position to complete the trial – not on account of adoption of delaying tactics at the instance of the petitioner, the petitioner would be free to move a fresh application for bail and that the Court concerned would be free to pass appropriate orders on merit. The petitioner was directed to cooperate with the Special Court for early completion of trial.

7. Mr. Aggarwala has referred to the role played by the petitioner as detailed in the complaint. The complaint records that after receiving the tablets containing pseudoephedrine, Rakesh Arora with the help of Manoj Kumar – the petitioner, used to fill the powdery substance in the tablets to

conceal it from the check done by various government departments. Similarly, Rakesh Arora and his associate Manoj Kumar used to sell the powder containing pseudoephedrine to various persons including some African nationals.

8. Having heard learned counsel and considered the submissions, I am inclined to allow the present application considering the fact that the petitioner has been in custody since 02.05.2013, i.e. nearly 22 months, and he appears to be the employee of the co-accused Rakesh Arora, who appears to be the person behind the alleged trade. From the reply filed by the respondent, it does not appear that the petitioner has been in any manner responsible for the delay of the trial. No such averment has been made in the reply. Admittedly, Section 37 is not attracted in the present case as the substance is a controlled substance and not a narcotic drug.

9. Reliance placed on the order passed by the Supreme Court in the case of *Satish Vijay @ Bunt* (supra), in my view, is of no avail for the reason that in the facts of that case, the accused/petitioner had remained in custody for a period of one year when the order came to be passed, and the Supreme Court itself granted liberty to the petitioner to once again apply for bail in case trial was not completed within four months by the Special Court.

10. As noticed above, the petitioner has been in custody for nearly 22 months. The decision rendered by this Court in *Niranjan Jayantilal Shah* (supra) shows that in cases where quantity of the controlled substance recovered was even much larger, the Court had granted bail to the accused considering the period for which they had remained in custody during the

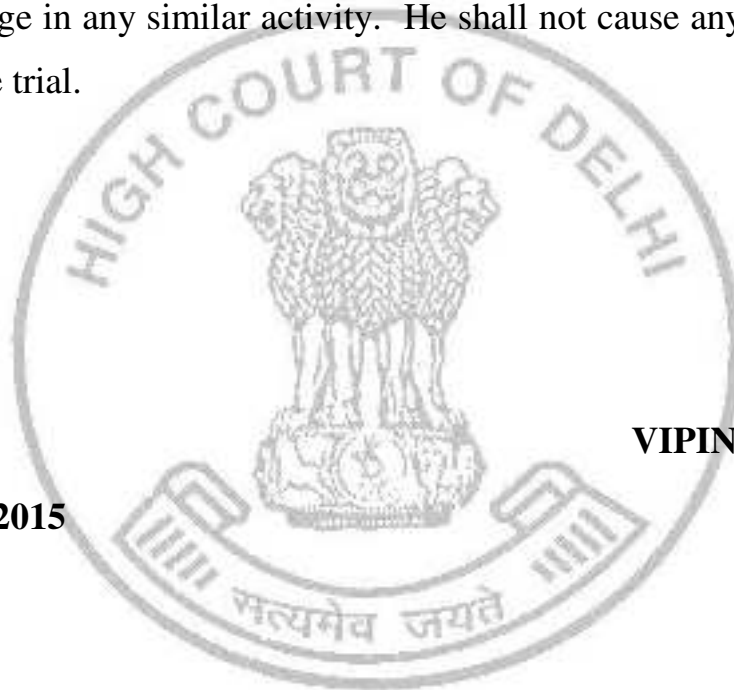
trial. Accordingly, the present application is allowed.

11. The petitioner is directed to be released on bail upon his furnishing personal bond in the sum of Rs.50,000/- with one surety of the like amount to the satisfaction of the trial court. The petitioner shall not leave the country without prior permission of the trial court. He shall surrender his passport, if any, before the trial court. During the pendency of the appeal, the petitioner shall not contact or try to influence any of the witness, and shall not indulge in any similar activity. He shall not cause any delay in the progress of the trial.

12. Dasti.

**MARCH 03, 2015**

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**VIPIN SANGHI, J**