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

Judgment delivered on: 28th September, 2015

\+   **CRL.M.C. No.2516/2015**

DIRECTORATE OF REVENUNE INTELLIGENCE
..... Petitioner
Represented by: Mr.Amish Aggarwala and Mr.Satish Aggarwala, Advs.

versus

ANTHONY AKOLO ALIAS TONY
..... Respondent
Represented by: Mr.Sumit Sharma, Adv

CORAM:
HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

1. Vide this petition filed under Section 482 of the Code of Criminal Procedure, 1973, petitioner seeks direction thereby setting aside the order dated 28.05.2015 whereby learned Trial Court enlarged the respondent on bail in Sessions Case No.10A/2013 titled as *'DRI vs Rakesh Arora & Ors'*.

2. Learned counsel appearing on behalf of the petitioner submits that vide earlier order dated 13.02.2015, learned Special Judge noted that National Identity Card, Passport and Driving Licence found in possession of respondent were forged document and non-existent document on the system of Ministry concerned and the High Commission of Republic of Namibia. It was further noted that on 01.05.2013 after the respondent was apprehended, he was trying to escape from the custody. On these considerations, vide order dated 13.02.2015, learned Judge declined to

grant bail. However, in the impugned order dated 28.05.2015, these aspects were not at all considered, though raised.

3. Learned counsel for petitioner further submitted that there was no change in the circumstances, no fresh material for considering the second bail application was produced and moreover, learned Trial Court has overlooked the fact that respondent was holding multiple identity documents & following documents were recovered from his possession:-

a) One Namibian passport No.P0062157 in the name of Thomas Tenjeni;
b) One National ID card No.82022110656 in Namibia in the name of Thomas Tenjeni;
c) One original DL No.5698200667 of Namibia in the name of Thomas Tenjeni;
d) One original DL No.BLF01330AAI of Nigeria in the name of Anthony Okolu U; and
e) Photocopy of South African Passport No.4330318 issued by Republic of South Africa in the name of Anthony Okolo U.

4. He further submitted that on verification the High Commission of Namibia vide letter dated 08.01.2014 informed that Namibian documents as mentioned above in the name of Thomas Tenjeni are forged and none of them existed in their system. The High Commission of Nigeria vide letter dated 05.11.2013 informed that the High Commission is unable to confirm the nationality without original passport. The High Commission of South Africa has not replied till now to any of the letters sent for verification.

5. Learned counsel for petitioner further submitted that petitioner was apprehended with 25 KG of pseudoehdrine from his co-accused Rakesh Arora and Manoj Kumar. The subsequent recovery of the said substance

had been made from the residential and commercial premises of co-accused Rakesh Arora.

6. It is not in dispute that that aforesaid both co-accused namely Manoj Kumar and Rakesh Arora were admitted on bail by this Court vide orders dated 03.03.2015 and 21.05.2015 respectively. The bar of Section 37 of the NDPS Act is not applicable as the recovery from the respondent was a controlled substance whereas the recovery could have been more than 100 KG. No minimum punishment has been prescribed under Section 25 (A) of the NDPS Act for possession of controlled substance, however can be awarded the punishment upto a period of ten years. It is also not in dispute that respondent is a foreign national, however having passports of different countries, till date it is not established from which country he belongs.

7. Accordingly, learned Trial Court has considered the material on record and all the facts as argued by the counsel for the petitioner and after considering the period of custody, respondent was granted bail by learned Trial Court with following conditions:-

> *"1. The accused shall surrender all his travel documents and shall not leave the jurisdiction of this Court i.e. New Delhi, without prior intimation and permission of the Court.*
> *2. LOC be issued so that the applicant/accused is not able to leave the country from any port.*
> *3. The concerned Embassy/High Commission of the country Nigeria as well as Namibia as an abundant caution be informed not to issue any travel documents to the accused during pendency of the trial.*
> *4. The applicant/accused shall report in the office of DRI every fortnightly during his trial.*
> *5. He shall also furnish to the Court, the address on*

> *which he would be residing which shall be duly verified by the IO of the case. Any further change in the address shall also be informed to the Court in advance."*

8. Admittedly, the respondent is in custody from last 26 months and both co-accused/main accused persons have already been released on bail. Moreover, the conditions imposed by learned Trial Court are sufficient whereby the respondent may not be able to leave the country or flee from the judicial process.

9. Also this Court in ***Emka Okafor vs State,*** *2005 (3) JCC (Narcotics)* 227 held that just because a foreign national is involved, it does not mean that he is to be denied the benefit of bail.

10. In view of above, I find no merits in the instant petition, which is rejected accordingly.

11. Order dasti to both the sides.

Crl.M.A.8731/2015 (for Stay)

With the dismissal of petition itself, the interim stay granted vide order 05.06.2015 stands vacated.

SURESH KAIT
(JUDGE)

SEPTEMBER 28, 2015
M/RS