THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CRIMINAL PETITION No. 12168 of 2016

ORDER :

1) The petitioner, who is accused No.1 in Crime No.F.No.DRI/HZU/48D/ENQ-8(INT-NIL) 2016 of Directorate of Revenue Intelligence (in short "D.R.I."), Zonal Unit, Hyderabad, filed the present Criminal Petition under Sections 437 and 439 Cr.P.C. seeking enlargement on bail in the above crime, registered for the offences punishable under Sections 21, 23, 28 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985.

2) The case of the prosecution as culled out from the first information report and panchanama is as under:

3) On 17.05.2016 the petitioner traveled by Emirates Flight from Dubai to India with a transit halt at Hyderabad. On a specific intelligence information about the involvement of the petitioner in smuggling narcotic substance from Dubai, the panch witnesses along with officers waited outside the aerobridge placed at Exit Gate 34 B of the Rajiv Gandhi International Airport. It was also informed to them that the said passenger/petitioner was traveling in the said flight in Seat No.47F. On arrival of the flight EK 526, the passengers started disembarking from the flight. The officers of D.R.I. started checking the boarding passes of the passengers who were coming out of the flight. The petitioner was identified and it was noted that she was carrying a black colour back pack, violet colour travel bag and one white colour lap tap bag. The

officers of D.R.I. along with mediators tailed the petitioner as she completed her immigration formalities. Thereafter, the petitioner was intercepted at the Customs Arrival Hall and then taken to Air Intelligence Unit Room located at the Customs Arrival Hall for the examination of her baggage. The documents were examined which revealed that she left Indira Gandhi International Airport, Delhi on 14.05.2016 and arrived at UAE on the same day. The stamping further shows that she left UAE on 16.05.2016 and arrived at Rajiv Gandhi International Airport on 17.05.2016. The passenger was not having any check in baggage. On examination of luggage carried by the petitioner it was found to contain five books wrapped and sealed with polythene cover. As the books were heavier than the normal weight they removed the polythene cover and found all the five books slightly damp and the front and back covers of the books were heavy. Then the officers of D.R.I. slit open the front cover of the first book and found some powder which was off-white in colour and slightly damp. The back cover of the said book was also slit open by the officers of D.R.I. which also contained some powder. Front and back cover of all the remaining books were slit open and they found off-white colour substance emanating some chemical smell. Chemical test was conducted and all the tests conducted on the sample seized tested positive to Cocaine. It was noted that about 1990 grams of Cocaine was being smuggled into India which according to the panchanama, cost about Rs.9,95,00,000/-. After complying with all the formalities, a panchanama was prepared and then the present crime came to be registered.

4) Learned counsel for the petitioner mainly submits that even accepting the allegations in the report to be true no offence is made out against the petitioner. According to him, the petitioner, who is a lady, was deceived by one Sama, by making arrangements for handing over of the books to her in Dubai and asking her to deliver the same to his friend in Hyderabad. He submits that the petitioner was induced with free trips to Dubai and also to other countries and that she was used by one Sama for smuggling narcotic drugs. He further submits that the petitioner is a lady and if the totality of the circumstance is taken into consideration, the petitioner is entitled for bail.

5) The same is opposed by the learned counsel appearing for the respondent contending that the sequences of events collected by the agency so far does not anywhere indicate the innocence of the petitioner. It is his case that even on earlier occasion the petitioner was sent to Combodia from where she smuggled narcotic substance by keeping them in chocolates. He submits that the conduct of the petitioner in going to Dubai for two days without any reason speak volumes. Having regard to the circumstances stated above and Section 35 and 54 of the Narcotic Drugs and Psychotropic Substances Act, 1985 it is to be presumed that the state of mind of the petitioner is to transport the narcotic substance and as such the petitioner is not entitled for any relief.

6) Offences under the Narcotic Drugs and Psychotropic Substances Act, 1985 are universally considered to be among the ones which are categorised as being the most detrimental to all sections of the community. Having regard to the disastrous effects of drug trafficking, particularly to the children and youth of the community where the results are shattering, different countries have prescribed punishments of a high order including in some parts of the World capital punishment for such involvement. An accused facing a drug's charge is a person on par with any other criminal who is accused of a high degree of violence to society. It is also common knowledge that there are no conceivable means of curtailing the repetition and further involvement in these offences and, therefore, to my mind, the legislature itself in this country has prescribed for good reason, that in this class of cases bail should be the exception and not the rule or rather that bail shall be a special exception and will be available in the rarest of cases. This position cannot, therefore be upset by a situation whereby on technical or hypothetical pleas persons who otherwise would not qualify for bail succeed in circumventing the other provisions of the Act which specifically prohibit the grant of bail.

7) Section 37 of the Narcotic Drugs and Psychotropic Substances Act, 1985 starts with a non-obstante clause stating that notwithstanding anything contained in the Code of Criminal Procedure, 1973 no person accused of an offence prescribed therein shall be released on bail unless the conditions contained therein are satisfied. Therefore the power to grant bail under any

of the provisions of Cr.P.C. should necessarily be subject to the conditions mentioned in Section 37 of the Narcotic Drugs and Psychotropic Substances Act, 1985.

8) Section 37 of the Narcotic Drugs and Psychotropic Substances Act, 1985 postulates the conditions or requirements for grant of bail in case of a person accused of an offence punishable for a term of imprisonment of five years or more under the Narcotic Drugs and Psychotropic Substances Act, 1985. It also states that in such cases the Public Prosecutor should be given an opportunity to oppose the application and if the Public Prosecutor opposes the application the Court cannot grant bail unless it is satisfied that there are reasonable grounds for believing that the accused is not guilty of such offences and that he is not likely to commit any offence while on bail. Bail cannot be granted on any other ground in view of the limitation specified in clause (b) of sub-Section (1) of Section 37 of the Narcotic Drugs and Psychotropic Substances Act, 1985. (*Narcotics Control Bureau v. Krishan Lal and others*[1])

9) Admittedly, in the instant case, the petitioner is charged for the offences under the Narcotic Drugs and Psychotropic Substances Act, 1985 which is punishable with imprisonment of more than five years. The petitioner's application herein is governed by limitations specified in clause (b) of sub-Section (1) of Section 37 of Narcotic Drugs and Psychotropic Substances Act, 1985. Therefore, the argument of the learned counsel for the petitioner that the petitioner is woman and that the entire investigation is

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[1] (1991) SCR (1) 139

almost complete and that she will abide by any conditions in the event of release cannot form a basis to grant bail. The Court has to see whether there are reasonable grounds for believing that the petitioner is not guilty of the offences and if so, whether the accused is not likely to commit any offence while on bail.

10) As stated above, the petitioner who came from Dubai with a transit halt at Hyderabad was intercepted by D.R.I. officials and about 1990 grams of cocaine was recovered from five books which were sealed with a plastic cover. The explanation offered by the petitioner is that one Sama with whom she developed acquaintance in Delhi arranged her trip to Dubai on 14.05.2016, where she was contacted by one person on the mobile having given to her by Sama and handed over five books which she brought them to be handed over to Sama. From the above, it is clear that there is no dispute with regard to petitioner carrying narcotic drug worth nearly ten crores from Dubai to India concealed in five books.

11) The question is whether the petitioner has done it without the knowledge or whether she was aware about the same.

12) The statement of the petitioner recorded by the D.R.I. officials under Section 67 of the Narcotic Drugs and Psychotropic Substances Act, 1985 show that the petitioner herein completed 12th standard and was doing graduation in B.A. (English) from IGNOU and has to clear one more paper. She started working in M/s. New Concept Information System, New Delhi as Admin. Assistant. In the year 2013, she joined M/s. Batter Cotton

Initiative, New Delhi, which is an NGO. In the month of August, 2015 she joined as Program Admin. Assistant in M/s. Population Foundation of India, New Delhi and was earning Rs.50,000/- per month. She admits her signature in the panchanama dated 17.05.2016 prepared at Rajiv Gandhi International Airport, Shamsabad. When questioned as to why she visited Dubai on 14.05.2016 and return to India on 17.05.2016, stated that on 14.05.2016 at about 8.00 p.m. she landed in Dubai and checked into a hotel at 22.00 hours. As the hotel was not good, she checked out around 10.00 a.m. on 15.05.2016 and started looking for another hotel. At about 12 noon she checked into Al Fareed Hotel, which is close to Palm Deira Metro Station. On 16.05.2016 at about 1.00 p.m. she went out to a market and met a shop keeper, who was selling apple phone. She talked with him for some time and later the said shopkeeper took her out for lunch. At about 3.00 p.m. she checked out of the hotel when she got a call from a person on a mobile which was handed over to her by Sama in India. The said person asked her to meet him near Palm Deira Metro Station. At about 5.00 p.m. the said person handed over five books asking her to hand over the same to his Nigerian friend in New Delhi. Then she took the Metro, went to the airport and then boarded the flight to India. She further states about how she met Sama in New Delhi and also her earlier visits to Combodia.

13) It is to be noted that the said Sama earlier arranged a trip to Sien Reap, Combodia. She is said to have traveled to Sein Reap from Delhi via Calcutta on 26.03.2016. She was given a mobile

phone with a pre-loaded SIM informing her that his friend in Sein Reap would contact her on that mobile on her arrival and he would hand over some chocolates which she has to bring back to Delhi. Her statement clearly shows that on her arrival at Sien Reap, one person called her and handed over two packets of chocolates which she brought back to New Delhi on 29.03.2016. It was informed to her that those two chocolate packets contain contraband but details of which were not disclosed to her.

14) In the month of April, 2016 the said Sama contacted her and told her that he would sponsor a trip to Dubai. She gave the passport to him and arranged a tourist visa. One person contacted him and handed over two boxes of chocolates to be handed over to Sama. She left Dubai on 19.04.2016, landed in Delhi on 20.04.2016 and handed over two boxes of chocolates to Sama.

15) From the statement made by the petitioner and the endorsements made on the passport clearly show that the petitioner was in the habit of visiting foreign countries at the instance of Sama bring back the contraband knowing it is to be a narcotic substance and then hand over the same to Sama. On two earlier occasions she went to Dubai and Combodia and smuggled narcotic substances. In fact her statement also discloses that she was paid some money after coming back to India with contraband. Therefore, there is no reason to disbelieve the prosecution case at this stage. The petitioner must have been used by some Nigerians in New Delhi but the fact that she successfully smuggled narcotic

substance twice earlier and since huge quantity of contraband costing about ten crores was seized from the possession of the petitioner, I am not inclined to consider the request of the petitioner.

16) Accordingly, the Criminal Petition is dismissed.

JUSTICE C. PRAVEEN KUMAR

31.08.2016
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