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

Order Reserved on 01st November, 2017
Order pronounced on 7th November, 2017

+ **BAIL APPLN. 407/2017**

NZUBE CHRISTIAN ASIKAPetitioner

Through: Mr. J.S. Kushwaha, Advocate.

Versus

NCBRespondent

Through: Mr. Rajesh Manchanda with Mr. Rajat
Manchanda, Advocates.

CORAM:

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

1. By way of the present petition filed under Section 439 of the Code of Criminal Procedure (hereinafter referred "Cr.PC."), the petitioner seeks **grant of Regular Bail** in SC No. 8897/2016 under Sections 21 (c), 23(c) read with Section 50-A of the NDPS Act.
2. The case of the prosecution is that on 17.06.2013, Deputy Director General, Narcotics Control Bureau, New Delhi received a communication from serious Organized Crime Agency about the information received from British Agencies that a parcel originating from Columbia with destination of India via DHL Couriers bearing AWB reference 91475848323 has been intercepted at London Airport on the suspicion of being prohibited drugs. Examination of the parcel confirms the presence of prohibited drugs and the parcel was sent to India to be received by the NCB under controlled Delivery in accordance with the

provisions of Section 50-A of the NDPS Act. Mr. C.S.K. Singh, IO was directed by Sh. R.K.Singh, Superintendent to receive the controlled delivery parcel and thereafter to handover the said parcel to DHL officials. The parcel was handed over to the DHL. Mr. Sandeep Kumar, IO was directed to hold surveillance and liaison at DHL Office. On receipt of information that one person was likely to come to DHL office for taking the delivery of the said parcel, team was deputed, the petitioner at 01.10 pm took delivery of the said parcel and he was intercepted by the team. On personal search of the petitioner contraband was recovered from the parcel and after complying with the due process of law petitioner was arrested. On search of the petitioner he was found in possession of three mobile phones and on checking of the said mobiles one of them was found to contain a message relating to the airway bill of the parcel in question.

3. Mr. J.S. Kushwaha, learned counsel for the petitioner contended that the petitioner has been falsely implicated in the present case; that there is a clear violation of mandatory provisions of law which casts shadow of doubt on the prosecution story; that the petitioner is having clean antecedents; that the petitioner is not a previous convict and there is no other criminal record available against the petitioner; that there is no chance of petitioner for absconding or tampering with the prosecution evidence. In support of his contention learned counsel for the petitioner relied on the case of ***Harish Joshi Vs DRI : 2009(3) C.C. Cases (HC) 198*** and

Edwards Khimani Kamau Versus Narcotic Drugs and Psychotropic Substances Act, 1985 : 2015 (8) LRC 313 (Del).

4. Per Contra, Mr. Rajesh Manchanda, advocate for the respondent opposed the bail application and contended that the petitioner is involved in the commission of a serious offence and had been caught by the officials of the respondent with the seized contraband of 185 grams of cocaine; that the arrest of the petitioner was for the violation of the commercial quantity of contraband, therefore, he is not entitled for bail in view of the provisions of Section 37 of the NDPS Act; that there is no ambiguity or irregularity in drawing the samples or sending the samples for laboratorial analysis; that there will be likelihood of the petitioner to abscond or remain indulge in such type of offences in future as well.
5. I have heard the learned counsel for the parties and perused the material on record.
6. In ***Kalyan Chandra Sarkar vs. Rajesh Ranjan : 2004 (7) SCC 528***), the Apex court has laid down the principles of granting or refusing bail and held as under:

"The law in regard to grant or refusal of bail is very well settled. The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for

prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the court granting bail to consider among other circumstances, the following factors also before granting bail; they are:

- a. The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence*
- b. Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.*
- c. Prima facie satisfaction of the court in support of the charge.”*

7. From the perusal of the record it transpires that the petitioner was apprehended from the spot by the raiding team after he took the delivery of the alleged parcel which contained 185 grams of cocaine. At the time of the search, the respondents have complied with the provisions envisaged under the statute and served him notice under Section 50 of the NDPS Act and also conducted the search in presence of independent witnesses and from 24.06.2013 he is in custody. The case is at the stage of prosecution evidence and the prosecution has already examined 19 witnesses out of 21

witnesses and trial is on its last legs. Further the charged offence is serious in nature which is punishable with imprisonment which may extend to twenty years. Moreover, the possibility of the petitioner fleeing from justice being a foreign national cannot be ruled out.

8. Keeping in view the principle laid by the Apex Court, aforementioned facts and circumstances, as well as taking into consideration the gravity of the offences alleged, this court does not deem it a fit case to grant bail to the petitioner.
9. Accordingly, the present petition is dismissed.
10. Before parting with the above order, it is made clear that observations made in the order shall have no impact on the merit of the case.

NOVEMBER 07, 2017
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SANGITA DHINGRA SEHGAL, J