

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

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Judgment Reserved on : 31st May, 2018

Judgment delivered on: 02nd July, 2018

+ BAIL APPLN. 1086/2018

JOYCE KAROUNG

..... Petitioner

versus

NARCOTICS CONTROL BUREAU

..... Respondent

Advocates who appeared in this case:

For the Petitioner :

Mr. Satish Tamta, Sr. Adv. With Mr. Jubair Ahmed Khan, Mr. Tamin Qadri and Mr. Shariq, Advs.

For the Respondent :

Mr. Rajesh Manchanda with Mr. Rajat Manchanda, Advs.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J

1. The petitioner seeks regular bail in Complaint Case No. 395/2017 pertaining to Case No. VIII/20/DZU/2017, titled as “NCB Vs. Fernanda Rengel Gregada & Ors.” under Section 21(C)/23(C)/29 Narcotics Drugs and Psychotropic Substances Act, 1985 (NDPS ACT for short).

2. The contention of the petitioner is that the petitioner has been falsely implicated and there is no material to connect the petitioner

with the alleged offence in respect of which the complaint has been filed. Further, it is contended that there is no recovery of any contraband from the petitioner and the petitioner is sought to be roped in solely based on the statement of the co-accused, allegedly recorded under Section 67 of NDPS Act. Further, it is submitted that the petitioner has exonerated herself in the statement allegedly recorded under Section 67 of the NDPS Act.

3. Subject complaint has been filed under Sections 21(C), 23(C) and 29 of NDPS Act contending that consequent to information received from reliable source, a team was constituted to conduct search and seizure proceedings. On 15.05.2017 at about 8.30 a.m., the team left the office of Delhi Zonal Unit (DZU) and reached near Hotel Toronto, Pahar Ganj at about 9.10 a.m. On reaching the Hotel it was put under surveillance. At about 10.15 a.m., one woman similar to the one mentioned in the information, arrived at the Hotel with one black colour trolley bag. After the woman entered the hotel, the officer enquired about her from the person at the reception, who revealed the name of the person as *Fernanda Rengel Grageda* (co-accused). The officers waited outside the hotel.

4. At about 18.05 hours, one northeastern woman is alleged to have arrived at the hotel reception holding one blue colour trolley bag and got booked a room for her. The northeastern woman had booked and checked into Room No. B – 1. *Fernanda*, the first referred woman

had booked room No. C – 4.

5. The team of the officers waited inside the room, opposite to room No. C – 4. At about 18.25 hours, the northeastern woman knocked the room No. C – 4 and entered the room along with the blue colour trolley bag. The NCB team thereafter knocked at room No. C – 4 and entered the same and intercepted both the women who were allegedly exchanging their trolley bags.

6. The northeastern woman identified as *Lhinpichong Kipgen* was holding a note of 10 rupee (Sl. No.523J57). When *Lhinpichong Kipgen* was enquired about the 10-rupee note, she disclosed that this was given to her by one woman named *Joyce Karoung* (petitioner herein) who told her to show this 10-rupee note to *Fernanda* to get the bag of drugs.

7. On opening the black trolley bag, a secret counterpart was found, wherefrom 3.2 kg. Cocaine was allegedly recovered. The blue colour bag was found empty and as allegedly stated by *Lhinpichong Kipgen* this bag was given to her by the petitioner who told her to exchange this bag and to get the bag of drugs from *Fernanda*. It is contended that as informed by *Lhinpichong Kipgen*, the bag of drugs was to be given to *Joyce (petitioner)* at Bikaner Shop, Greater Kailash-II.

8. At the time when search and seizure proceedings were going

on, it is alleged that *Lhinpichong Kipgen* was getting continuous calls from the mobile phone of *Joyce* who directed *Lhinpichong Kipgen* to leave the hotel after receiving the bag of drugs and to reach Bikaner Shop, G.K-II.

9. The NCB Team along with *Lhinpichong Kipgen* left Hotel Toronto for Bikaner Shop at G.K. -II to intercept *Joyce* (petitioner,) who was allegedly to receive the bag of cocaine as per the version of *Lhinpichong Kipgen*. On reaching the Bikaner Shop, G.K.-II it was found that *Joyce* (petitioner) was already standing there. She was identified by *Lhinpichong Kipgen*. It is contended that on oral discussion, the petitioner *Joyce* disclosed that the bag of drugs was to be delivered to one Nigerian person named *Stephen*.

10. On the directions of the NCB team, *Joyce* telephoned someone for sending *Stephen* to collect the bag containing drugs. *Stephen* came within a few minutes in a Taxi. *Joyce* rushed near the Taxi and at that very time, *Stephen* enquired about the bag of drugs from *Joyce*. Both were apprehended.

11. Notice was issued under Section 67 of NDPS Act and as per the prosecution; voluntarily statements have been given *inter alia* by Fernanda Rengel Grageda, *Lhinpichong Kipgen*, *Joyce Sana Ali Khan* and *Chukwuebuka Stephen*.

12. In her statement under Section 67 of the NDPS Act given by

Fernanda Rengel Grageda, she is alleged to have *inter alia* stated that she lives in Bolivia and met a person named '*Negrato*', who offered her a job to deliver a bag containing cocaine in India for exchange of money. As per his instructions, she was to travel to Hotel Toronto Pahar Ganj. As per the Whatsapp message sent by him, one lady was to come to collect the bag and would show a ten rupee note, photo of which was sent on Whatsapp chat by *Negrato* as a code for delivery of the suitcase.

13. In her statement under Section 67 of the NDPS Act given by *Lhinpichong Kipgen*, she has stated that on 14.05.2017 she had received the call from the petitioner *Joyce*, who is also related to her. She was given a blue colour trolley bag by *Joyce* and the 10 Rupee note. On 15.05.2017, she had to go to Pahar Ganj and book a hotel there for one day. It is stated that on 15.05.2017 at 15.30 hours, she left her house by auto rickshaw and reached Green Park near Metro Station and after some time *Joyce* reached near Metro Station and told her that, she has to go to Pahar Ganj. Later, she sent a message giving the name of the Hotel where she had to book a room for one day. She took the metro from Green Park to New Delhi Railway Station. In between, she received a message from *Joyce* in which the address of Hotel Toronto was given. Thereafter *Joyce* is alleged to have called her and informed that one woman was staying in same hotel in Room No. C – 4 and she had to go there and show the 10 Rupee note and collect the trolley bag containing drugs by giving her the empty

trolley bag. It is stated that she went to Room No. C – 4 and knocked the door. One woman opened the door and she told her that *Joyce* sent her and showed the 10-rupee note to her. It is stated that while they were exchanging the bags, NCB team entered. Thereafter it is stated that at about 22.00 hours she along with NCB team reached at G.K-II. She saw *Joyce* standing in front of Bikaner Shop when she went close to her, *Joyce* asked her about the bag. In the meantime, NCB team cordoned them. Thereafter NCB team asked *Joyce* about the bag and she informed that one Nigerian namely *Stephen* had asked her to collect the bag from the hotel and *Joyce* asked *Lhinpichong Kipgen* to collect the bag from the hotel. Thereafter *Joyce* called someone to come and collect the bag in front of the Mall.

14. In his statement under Section 67 of the NDPS Act, *Chukwuebuka Stephen* stated that he was in dire need of money to go back to his country. He met one person named *James*, a Nigerian national who told him to collect a bag from G.K.-II in exchange of money. On 15.05.2017, he was asked to go to G.K.-II and was told that one northeastern Indian woman would give him the bag. He had to receive it and hand it over to *James* at Alaknanda, Delhi. When asked as to how he would identify the woman, he was told that she would be standing in front of the mall at about 10 p.m. in the night. He took a Taxi and left for G.K.-II Bikaner shop. On reaching, he informed *James* that he had reached and thereafter waited for a call from *James*. After some time one Indian woman came to him. There

were some other people also with her. The woman was identified as *Joyce*. In his statement, he has confirmed that he received a telephone call from *Joyce* and he further stated that *Joyce* knew that he was coming to receive cocaine from her. He stated that earlier he along with *James* had come to receive cocaine from *Joyce*. However, this time he came alone to receive cocaine from *Joyce*.

15. Learned counsel for the petitioner has contended that there is no material to connect the petitioner with the subject offence and mere statement of a co-accused even under Section 67 is not sufficient to prima facie show involvement of the petitioner and as there is no evidence to connect the petitioner with the subject offence, rigours of Section 37 of the NDPS Act would not be applicable.

16. Reliance is placed by learned senior counsel for the petitioner on the judgments in case of (1). '*Ranjitsing Brahmajeetsing Sharma Vs. State of Maharashtra*' & Anr. (2005) 5 SCC 294, (2) *Harpreet Singh Bahad Vs. DRI*, judgment dated 23.09.2009 in Bail Appln. No. 2211 of 2008, (3) *Haricharan Kurmi & Anr. Vs. State of Bihar* (1964) 6 SCR 623, AIR 1964 SC 1184, (1964) 52 ITR 443 (1964) CrL. L.J. 344, (4) *Sarwan Singh Janga Vs. NCB*, 2005(3) JCC (Narcotics) 209, (5) *Atul B. Kohly Vs. NCB*, 2002(2) JCC 949, (6) *Arif Khan @ Agha Khan Vs. State of Uttrakhand*, CrL. Appeal No. 273/2007 and (7) *Tofan Singh Vs. State of Tamil Nadu* CrL. App. No. 152/2013 dated 08.10.2013 to contend that mere statement of a co-accused cannot

form the basis of even holding prima facie involvement of the petitioner and further that statements given under section 67 could not be treated at par with statements under section 108 of Customs Act and Section 14 of the Excise Act, thereby applying the rigours of Section 37 of the Act and disentitling the petitioner from grant of bail.

17. Learned counsel for the respondent contended that statement of the co-accused is sufficient to show prima facie case and is admissible in evidence as such rigours of Section 37 would squarely apply.

18. Reliance is placed on the decision of this Court in CrI. Rev. Petition No. 518/2007, titled as *S.K. Jain Vs. M.G. Atri* dated 02.05.2012, *Manjit Singh @ Mange Vs. CBI*, (2011) 11 SCC 578.

19. Section 37 of the NDPS Act reads as under:

“37: Offences to be cognizable and non-bailable.—

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)—

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for 2[offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity] shall be released on bail or on his own bond unless—

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the

application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal”

20. Section 67 of the NDPS Act reads as under:

“67: Power to call for information, etc.—

Any officer referred to in section 42 who is authorised in this behalf by the Central Government or a State Government may, during the course of any enquiry in connection with the contravention of any provisions of this Act,—

(a) call for information from any person for the purpose of satisfying himself whether there has been any contravention of the provisions of this Act or any rule or order made thereunder;

(b) require any person to produce or deliver any document or thing useful or relevant to the enquiry;

(c) examine any person acquainted with the facts and circumstances of the case.”

21. The Supreme Court of India in *Babua v. State of Orissa*, (2001) 2 SCC 566 held as under:

“3. In view of Section 37(1)(b) of the Act unless there are reasonable grounds for believing that the accused is not guilty of such offence and that he is not likely to commit any offence while on bail alone will entitle him to

a bail. In the present case, the petitioner attempted to secure bail on various grounds but failed. But those reasons would be insignificant if we bear in mind the scope of Section 37(1)(b) of the Act. At this stage of the case all that could be seen is whether the statements made on behalf of the prosecution witnesses, if believable, would result in conviction of the petitioner or not. At this juncture, we cannot say that the accused is not guilty of the offence if the allegations made in the charge are established. Nor can we say that the evidence having not been completely adduced before the Court that there are no grounds to hold that he is not guilty of such offence. The other aspect to be borne in mind is that the liberty of a citizen has got to be balanced with the interest of the society. In cases where narcotic drugs and psychotropic substances are involved, the accused would indulge in activities which are lethal to the society. Therefore, it would certainly be in the interest of the society to keep such persons behind bars during the pendency of the proceedings before the court, and the validity of Section 37(1)(b) having been upheld, we cannot take any other view.”

22. In the present case as noticed above, the allegation of the prosecution are that on information received search and seizure was carried out at hotel Toronto at Paharganj. One woman *Fernanda* came with a bag containing drugs, she was to deliver the same to another woman who would show a pre-decided ten rupee note, picture of which was sent to her through Whatsapp. The other woman *Lhinpichong*, who is related to the petitioner, was sent by the petitioner along with the pre-decided ten-rupee note to collect the bag of drugs and deliver the same to the petitioner. The address of the

hotel, where the exchange was to take place, was messaged by the petitioner to *Lhinpichong*. *Lhinpichong* was to deliver the bag in front of Bikaner shop at Greater Kailash – II. The petitioner repeatedly called up *Lhinpichong* during the time the proceedings were being carried out at Hotel Toronto. The petitioner met *Lhinpichong* at the designated time and place. The Petitioner was to deliver the bag to *Stephen*. Petitioner called *Stephen* to the designated place, disclosed by the petitioner. *Stephen* identified the petitioner and in his statement disclosed that he had earlier come with *James* to collect drugs from the petitioner and this time had come alone.

23. It is not a case that the Petitioner has been apprehended solely on the basis of statement given by the co-accused. Petitioner is also alleged to have been arrested as part of the search and seizure operation from one of the places, which was disclosed by the co-accused during the operation. Not only is the petitioner alleged to have been apprehended, she is alleged to have led to the arrest of another co-accused *Stephen*, who is alleged to have come to collect the bag of drugs from the petitioner. The petitioner is alleged to be a major link in the entire operation. *Stephen* who is apprehended on the disclosure of the petitioner in his statement under section 67 has also named the petitioner and shown her involvement. Not only has he named her, but has also stated that earlier also he had come with one *James* to collect drugs from the petitioner.

24. The ratio of the judgment of the Supreme Court in *Babua (supra)* is squarely applicable in the facts of the present case. At this juncture, in my view, it cannot be *prima facie* held that the petitioner is not guilty of the offence, if the allegations made are established. Nor can it be *prima facie* said that there are no grounds to hold that she is not guilty of such offence. As held by the Supreme Court the liberty of a citizen has got to be balanced with the interest of the society. In cases where narcotic drugs and psychotropic substances are involved, the accused would indulge in activities which are lethal to the society. As per the allegations, qua the petitioner it is not the first time, there are allegations of involvement of the in similar transaction in the past.

25. The judgments referred to by learned senior counsel for the petitioner do not further the case of the petitioner, as the case of the prosecution is not based solely on the statement of the co-accused.

26. Keeping in view the totality of the facts and circumstances of the case and the nature of allegation and the material on record, I am of the view that the petitioner is not entitled to grant of bail. The Petition is accordingly dismissed.

27. Order *Dasti* under signatures of the Court Master.

JULY 02, 2018/‘rs’

SANJEEV SACHDEVA, J