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

+ **BAIL APPLN. 2746/2018 & CrI.M.A. 47857-58/2018**

ANTHONY UMEH Petitioner

Through: **Mr. Vikas Gautam, Adv.**

versus

STATE Respondent

Through: **Mr. K.S. Ahuja, APP for the State**
with ASI Sanjay, Narcotics
Cell/Crime Branch, Delhi.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

% **26.11.2018**

The petitioner was arrested on 23.07.2015 in case FIR no. 109/2015 of police station Crime Branch, along with one another named Agbahia Ikenna. As per the evidence gathered during the investigation, which has led to trial of both the said persons presently pending in the court of Special Judge, the said co-accused upon search was found to be having in possession contraband in the nature of heroin to the extent of 600 gms. Both the arrestees are Nigerian Nationals and it appears they did not have any authorisation to be on Indian soil on the said date, time and place. Charge under Section 14 of Foreigners Act has also been framed besides charge under Section 29 of Narcotic Drugs and Psychotropic Substances Act (NDPS Act,), 1985 against both the co-accused, also facing trial on the charge under Section 21 (C) of NDPS Act. The petitioner had applied for

release on bail before the court of sessions. By order dated 12.10.2018, the said application was dismissed with costs of Rs.8,000/-. Having regard to the nature of prayer that was made, there was no occasion for the trial court to impose costs. The order to that effect is consequently set aside.

Be that as it may, it is the submission of the petitioner that the only allegations against him on which he should be tried pertain to the offence under Section 14, Foreigners Act. It is his submission that the contraband was recovered from the co-accused and there is nothing presented in the nature of evidence to support the case of he having abetted or conspired with the co-accused for commission of any offence under NDPS Act.

Having heard both sides and having perused the record, this Court finds the submission to the above effect not correct. There is evidence relied upon by the prosecution, *prima facie* actionable, showing that prior to the inspection of the two arrested persons, the card board box which contained the recovered substance was being carried by the petitioner herein, he having passed it on to the co-accused, thus, the recovery being affected from the said other person.

In the above facts and circumstances, it cannot be said that the case against the petitioner under NDPS Act is wholly unfounded.

The petition and the applications filed therewith are dismissed.

R.K.GAUBA, J

NOVEMBER 26, 2018

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