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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

BAIL APPLICATION NO. 591 OF 2019

Nisha James

..Applicant

Vs

Narcotic Control Bureau & Anr.

..Respondents

Mr. Tariq Sayyed I/b S.S. Bhandary for the Applicant.

Mr. Rahul Tiwari, Special P.P. a/w Ms. Rutuja Ambekar for Respondents.

CORAM : A.S.GADKARI, J.

DATE : 30th April 2019.

P.C.:

1] This is an application under Section 439 of Cr. P.C. for bail in NCB/BZU/CR No. 22 of 2017 registered with Narcotic Control Bureau (NCB), Mumbai Zonal Unit under Sections 8(c), 23, 28 and 29 of Narcotic Drugs And Psychotropic Substances Act, 1985 (NDPS Act.)

2] Heard the learned Counsel for the applicant and the learned Special P.P. Perused the record of investigation.

3] It is the prosecution case that, Shri Kulbhushan Singh, Intelligence Officer, NCB, Mumbai received a specific confidential

information that, a parcel under Air Way Bill No.3484122051 dated 30.11.2017 was lying at the hub of M/s Aramex Indi Pvt. Ltd situated at Marol Co-operative Industrial Estate, Andheri (East), Mumbai in concealed condition containing contraband under the NDPS Act. It was further informed that, the said parcel was destined to a person in Australia. In pursuance of the said information, the Officer of the NCB conducted raid at the said place on 4.12.2017 at about 12.15 p.m and found the said parcel lying there. The name of the applicant with her address of Ulve- Dighode, Navi Mumbai was mentioned on the Airway Bill. The officer of the NCB in presence of two panch-witnesses, opened the said parcel and found three brown colour card boxes depicting symbol of 'PARKER' embossed on it. After further opening the said boxes, they found white colored crystal substance in it. After testing the said substance with Field Testing Kit, which demonstrated that, the said substance as Methaqualone which is a psychotropic substance under NDPS Act. The said substance weighed 570 grams. The Officer of NCB took samples from the said boxes for sending it to the Forensic Science Laboratory. The balance contraband was seized at the spot. During the course of investigation, the applicant came to be arrested and her statement under Section 67 of NDPS Act has been

recorded on 5.12.2017 and 6.12.2017. After completion of investigation, the Investigating Agency filed complaint in the Court of Special Judge for NDPS Act, Greater Mumbai.

4] Mr. Sayyed, the learned counsel for the applicant submitted that, the applicant herein is infact a victim of circumstances. That it is her husband who was in the said trade/business of drugs and the applicant was only directed to hand over the parcel to the courier company. That in her statement under Section 67 of NDPS Act, she has narrated the difficulties faced by her in life and support given by her husband James. He further submitted that, there is no legally admissible evidence under section 67 of the NDPS Act. That the applicant herself had given parcel to M/s Aramex India Pvt. Ltd., Navi Mumbai for its onward transmission. That the container/box which was sent to Australia through M/s Aramex Indi Pvt. Ltd was already cut opened by the Investigating Officer even before the arrest of the applicant. The applicant is not alone responsible for alleged transportation of the contraband and therefore it cannot be said that the applicant is prima facie guilty of the offence and therefore the rigors of section 37 of NDPS Act may not be taken into consideration and the applicant may be released on bail.

5] The learned Special P.P vehemently opposed the application and submitted that, the statement recorded under 67 of NDPS Act does not require corroboration. That during the course of search of the house of the applicant, one more Airway Bill bearing No.3667085 was found. That the said bill indicates that, on earlier also occasion the applicant had sent consignment to Australia in favour of Mr. M. Wilson. That the applicant in her statement under 67 of NDPS Act has admitted that, on various occasions she had sent contraband to Australia and other parts of the globe. That her husband is a Nigerian citizen and is absconding till date. He submitted that, the applicant is a habitual offender and she may not be released on bail.

6] Perusal of the record of complaint and other documents would indicate that, after receipt of the said confidential information, when the Officers of NCB visited the premises of M/s Aramex Indi Pvt. Ltd., Andheri, Mumbai, they immediately cut opened the parcel and found white crystal substance weighing 570 grams in it. The chemical analysis of the said substance indicates that, the said substance is Methamphetamine, a psychotropic substance under NDPS Act. The Investigating Agency though was aware of the fact that, the said parcel was booked by the applicant at

Vashi branch of M/s Aramex Indi Pvt. Ltd and without verifying the fact that the consignee is really applicant or someone else, cut it open it in the absence of applicant, before her actual apprehension. The panch-witnesses are the employees of the said M/s Aramex Indi Pvt. Ltd. The said parcel was lying in hub of M/s Aramex India Pvt. Ltd. and the possibility of its tampering with cannot be ruled out. Though it is stated by the panch-witnesses that, the Investigating Officer cut opened the parcel in their presence, however, they are the employees of M/s Aramex Indi Pvt. Ltd. It appears that, there is no independent panch-witness when the said parcel was cut opened by the officers of N.C.B.

7] In view of the above, this Court is of the opinion that, the applicant can be released on bail.

Hence the following Order:

i] Applicant be released on bail in NCB/BZU/CR No. 22 of 2017 registered with Narcotic Control Bureau (NCB), Mumbai Zonal Unit, on her furnishing PR bond of Rs.25,000/- with one or two solvent local sureties in the like amount.

ii] The applicant shall attend all the dates before the Trial Court unless granted exemption by the concerned Court.

iii] Applicant shall not tamper with the evidence and/or influence the prosecution witnesses.

8] Application is allowed in the aforesaid terms.

(A.S.GADKARI, J.)