

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CRM-M-29079 of 2019

Date of Decision: 19.08.2019

Festus Benson Onwuchuruba

....Petitioner

VERSUS

U.T. Chandigarh

....Respondent

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Ashish Pal Kaushal, Advocate
for the petitioner.

Mr. Sukant Gupta, Addl. P.P., UT Chandigarh.

SURINDER GUPTA, J.(Oral)

The present petition has been filed under Section 439 Code of Criminal Procedure for grant of regular bail to the petitioner in case FIR No.11 dated 12.01.2019 registered for offences punishable under Sections 465 and 467 of Indian Penal Code (for short, "IPC") at Police Station Sector 39, Chandigarh.

Heard.

The petitioner was apprehended on 30.11.2007 by Narcotics Control Bureau, Chandigarh and recovery of 10 kgs. of Heroin was effected from his possession. The vehicle and all the documents including his passport were taken into possession at that point of time and he faced trial in that case, which culminated in his conviction and sentence of rigorous imprisonment for 15 years and a fine of ₹1 lakh. In default of payment of fine he was directed to further undergo rigorous imprisonment for 2 years.

He filed appeal before this Court and his sentence was reduced to rigorous

imprisonment for ten years.

A letter was written by the High Commission of Nigeria, New Delhi on 03.07.2018, seeking deportation of petitioner to his native country of Nigeria. It was at this stage that enquiry into his passport was initiated and the instant FIR was registered against him on 12.01.2019 for possessing a fake passport and visa document of Republic of Burundi. After completion of investigation challan against the petitioner has been presented in Court.

Learned counsel for the petitioner submits that petitioner is in custody for the last about 12 years and his passport was in possession of State since then. The purpose of recording the instant FIR is to obstruct his deportation to his country after completion of his sentence.

Learned Addl. P.P. representing U.T. Chandigarh submits that passport of the petitioner was taken into possession by NCB. It remained in its possession. The petitioner has never represented before the Court that he is not a native of Republic of Burundi. The factum of his possessing fake passport and visa came to notice on receipt of letter of High Commission of Nigeria, New Delhi, written on 03.07.2018. The offence of possessing a fake passport and fake visa was not within the knowledge of U.T. Police, as such, FIR was rightly registered on coming to know of this fact. He further submits that in the event of bail being allowed to the petitioner, he may abscond to his country and avoid to appear in the trial Court.

It is not disputed that the petitioner is native of Nigeria. All the documents of his nationality have been sent by the High Commission of Nigeria with its letter dated 03.07.2018. After completion of investigation, challan against the petitioner has already been presented in Court and the

trial is in progress.

Without expressing any opinion on merits of the case, keeping in view the period of custody of the petitioner and the fact that conclusion of trial will take considerably long time, I find no reason to decline the instant application. The same is accepted. Petitioner-Festus Benson Onwuchuruba is ordered to be released on regular bail on furnishing bail bond and surety bond to the satisfaction of concerned trial Court/Chief Judicial Magistrate/Duty Magistrate, subject to following terms:-

- (a) The petitioner shall comply with the conditions mentioned in Section 437(3) Cr.P.C.
- (b) In the event of his absence on any date of hearing, the benefit of bail allowed to the petitioner shall stand withdrawn. The trial Court shall be competent to cancel his bail bond and surety bond and proceed to procure his presence in accordance with law. In that eventuality the petitioner shall have to apply for bail afresh.
- (c) He shall not leave the country without the previous permission of the Court.
- (d) He shall disclose his local address to trial Court at the time of furnishing bail bond and surety bond.

August 19, 2019
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(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No