

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

% *Pronounced On: 24<sup>th</sup> November, 2020*

+ **BAIL APPLN. 277/2020**

**NAGARY ALLY KOMBO**

..... Petitioner

Through: Mr. Ajay Verma and Ms.  
Katyayini, Advocates.

**versus**

**NARCOTICS CONTROL BUREAU** ..... Respondent

Through Mr. Yatharth Singh & Mr. P.C.  
Aggarwal, Advocates.

**CORAM:**  
**HON'BLE MR. JUSTICE BRIJESH SETHI**

**J U D G M E N T**

**BRIJESH SETHI, J.**

1. Vide this order I shall dispose of a bail application filed u/s. 439 CrPC by the petitioner **Nagary Ally Kombo** in Case No. SC 139/2019 u/s. 9A/25A r/w. Section 29 of NDPS Act.

2. Ld. Counsel for the petitioner has prayed for bail on the ground that petitioner is innocent and has been falsely implicated. It is submitted that presumption of innocence lies in favour of the

petitioner till the guilt is proved beyond reasonable doubt. It is further submitted that there is no possibility of petitioner fleeing from justice as his passport was seized at the time of investigation by the IO at NCB on the date of arrest.

3. It is next submitted that at the time of exercise of bail, the nature of allegations and gravity and seriousness of the offence, nature of punishment, character and nature of evidence, chances of tampering with the prosecution evidence and chances of fleeing from justice and, status of the accused person and all the cumulative factors are required to be considered while granting bail and bail jurisdiction cannot be exercised in a capricious and arbitrary manner depriving the petitioner of his right to secure liberty by following the procedure established by law.

4. It is further submitted that NCB officials after conducting the investigation, have filed the police report before the Ld. Trial court and the investigation stands completed, and the petitioner is no more required by the investigating agency and since the matter is at the initial stage of prosecution evidence, there is very likelihood that the

conclusion of the trial will take time. It is further submitted that the petitioner is the sole bread earner of his family consisting of his old and ailing widowed mother, wife and 1-1/2 years old child and due to his incarceration, the entire family is suffering. The petitioner is a law abiding, peace loving person and has clean antecedents. The petitioner has been arrested only on the disclosure statement of the co-accused. He has been falsely implicated in connivance with the investigating agency. The petitioner had filed a regular bail application before the Ld. Trial Court, however, the same was dismissed vide dated 13.8.2019. It is prayed that since the petitioner is innocent and falsely implicated and is not required for the purpose of investigation, he be, therefore, released on bail in the interest of justice.

5. Ld. Advocate for the NCB has opposed the bail application on the ground that allegations against the petitioner are serious in nature.

6. I have considered the rival submissions. Learned Counsel for the petitioner has relied upon the following cases in support of his submissions:-

- i). Sailesh R. Shah v. The Intelligence Officer, NCB,  
Eastern Regional Unit, 2002, SCC Online Cal 158,

- ii). Rajeev Chaudhary v. State (NCT) of Delhi, (2001) 5 SCC 34,
- iii). SC Legal Aid Committee representing Under trial Prisoners v. Union of India (1994) 6 SCC 731,
- iv) Manoj Kumar v. Revenue Intelligence, 2015, SCC Online Del 7830,
- v). niranjan Jayantilal Shah v. Dte. Of Revenue Intelligence, 2013, SCC OnLine Del. 4608,
- vi). Rajesh Sharma v. Directorate of Revenue Intelligence, B.A. No. 1590/2018, decided on 16.11.2018.
- vii) Sartori Livio v. State (Delhi Admin) B.A. No. 89/2005, decided on 22.02.2005,
- viii) Lambert Kroger v. Enforcement Directorate, Crl.M.(M) No. 2580/99, decided on 28.02.2020
- ix) S. Hussain & Mohammed Hussain & anr. v. The Sr. Intelligence Officer, Dte. of Revenue Intelligence Cell, Tuticorin, Crl. A. (MD) No. 812 of 2004, decided on 30.04.2010.

7. I have gone through the above case laws. However, the same are distinguishable on the basis of facts and circumstances stated therein. It is well settled that judicial precedent cannot be followed as a statute and has to be applied with reference to the facts of the case involved in it. The ratio of any decision has to be understood in the background of the facts of that case. What is of the essence in a decision is its ratio and not every observation found therein nor what

logically follows from the various observations made in it. It has to be remembered that a decision is only an authority for what it actually decides. It is well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision. The ratio of one case cannot be mechanically applied to another case without regard to the factual situation and circumstances of the two cases.

8. Moreover, in case of bail, numbers of factors are required to be considered by Court. The Hon'ble Supreme Court in **State of Bihar & Anr. vs. Amit Kumar@ Bachcha Rai, (2017) 13 SCC 751** has held that there cannot be straight jacket formula for consideration of grant of bail to the accused. The relevant para runs as under:-

*“11. Although there is no quarrel with respect to the legal propositions canvassed by the learned counsels, it should be noted that there is no straight jacket formula for consideration of grant of bail to an accused. It all depends upon the facts and circumstances of each case. The Government's interest in preventing crime by arrestees is both legitimate and compelling. So also is the cherished right of personal liberty envisaged under Article 21 of the Constitution. Section 439 of The Code of Criminal Procedure, 1973, which is the bail provision, places responsibility upon the courts to uphold*

*procedural fairness before a persons liberty is abridged. Although bail is the rule and jail is an exception is well established in our jurisprudence, we have to measure competing forces present in facts and circumstances of each case before enlarging a person on bail.”*

*(Emphasis supplied)*

9. As per prosecution case, on 10.01.2019, on the basis of a secret information, co-accused i.e. Kelvin George Katindasa was intercepted at IGI Airport New Delhi while he was travelling to Dar Es Salaam via Doha and during search 24.5 kg of Pseudoephedrine was recovered from his bag. During investigation, accused Kelvin George Katindasa tendered his voluntary statement U/s 67 of NDPS Act, wherein he admitted the recovery and his involvement in the present case. He further disclosed that he came to New Delhi along with his brother i.e. petitioner and stayed at Hotel Venus Mahipalpur for ten days. After ten days, the petitioner had left for Mumbai and he (Kelvin) left the hotel and stayed with petitioner's friend KING for 25 days at somewhere in Janakpuri, Delhi. On 09.01.2019 petitioner Nagary asked Kelvin to go to INA Market to collect his suitcase and he also gave a mobile number for contact purpose. He (Kelvin) accordingly went to INA Market and collected the suitcase

containing Pseudoephedrine form Chinedu as directed by the petitioner. Kelvin was supposed to handover this suitcase containing Pseudoephedrine to petitioner at Tanzania. The said suitcase which contained 24.5 kg of Pseudoephedrine was, however, seized from his possession, by NCB Delhi at IGI Airport New Delhi on 10.01.2019.

10. A notice U/s 67 of the NDPS Act was issued to the petitioner Nagary Ally Kombo and he had tendered his voluntary statement U/s 67 of NDPS Act wherein he disclosed that on 02.12.2018, he had come to IGI Airport, New Delhi along with Kelvin George Katindasa and stayed together in a Hotel Venus at Mahipalpur for about ten days and thereafter he had gone to Mumbai and made arrangement of stay of Kelvin George Katindasa with one person namely King. He further disclosed that on 09.01.2019 he (petitioner Nagary Ally Kombo) asked Kelvin George Katindasa to reach INA Market and on his direction, Kelvin George Katindasa reached there, where he received a bag from one person namely Chinedu. The said bag contained Pseudoephedrine. He further disclosed that he had booked ticket of Kelvin George Katindasa for his journey to Dar Es Salaam. It is

submitted that petitioner has tendered his voluntary statement U/s 67 of the NDPS Act and same is admissible in evidence.

11. Perusal of record, thus, reveals that petitioner Nagary Ally Kombo had directed Chinedu to handover the bag containing contraband to co-accused Kelvin. During investigation of the case, Mobile phones of the petitioner as well as other accused persons were examined and it was revealed that they were in touch and which prima facie shows that they are member of a drug syndicate and involved in the drug trafficking. The accusation in the present case is with regard to commercial quantity. As per Section 37 of the NDPS Act, if a person is accused of enumerated offences under the said provision and in case, the Court proposes to grant bail to such a person, two conditions are to be mandatorily satisfied in addition to the normal requirements under the provisions of the Cr.P.C. or any other enactment. Firstly the Court must be satisfied that there are reasonable grounds for believing that the person is not guilty of such offence. Secondly that person is not likely to commit any offence while on bail. Section 37 of the NDPS runs as follows;

**Section 37 in The Narcotic Drugs and Psychotropic Substances Act, 1985**

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 Procedure, 1973 (2 of 1974) or any other law for the time being in force, on granting of bail.]

12. The facts appearing on record prima facie reveal that petitioner is involved in drug trafficking and this Court is of the opinion that there are no reasonable grounds to believe that he is not guilty of offence charged. Huge quantity of Pseudoephedrine weighing 24.5 kg,

has been recovered. Moreover, since the chargesheet prima facie reveals that petitioner is member of a drug syndicate, it cannot be said that he will not commit any offence if released on bail.

13. In view of the above facts appearing on record and nature of offence, no grounds for grant of bail to the petitioner are made out. The bail application is, therefore, dismissed.

14. However, nothing stated hereinabove will amount to expression of opinion on the merits of the case.

15. The order be uploaded on the website of this Court forthwith.

**NOVEMBER, 24<sup>th</sup>, 2020/Amit**

**BRIJESH SETHI, J**