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

+ **BAIL APPLN. 728/2020**

CHIMA ANTHONY

.....Applicant

Through: Ms.Sushma Sharma, Advocate.

Versus

THE STATE

.....Respondent

Through: Mr.Ashok Kumar Garg, APP for State
with SI Sandeep, Crime Branch.

HON'BLE MS. JUSTICE ANU MALHOTRA

% **ORDER**
28.07.2020

(hearing through Video Conferencing)

Vide the present application, the applicant seeks the grant of bail in relation to FIR No.204/2017, PS Crime and Railway submitting to the effect that the applicant has been incarcerated since 15.11.2017 and that on an examination of the purity content of the alleged contraband of the Cocaine allegedly recovered from the applicant/petitioner, the purity of the contraband comes to 12.48 gms i.e. only an intermediate quantity and that the embargo of Section 37 of the NDPS Act, 1985, would not apply.

It has been submitted on behalf of the applicant that despite the directions dated 02.04.2019 in Bail Appln. No.257/2019 of this Court, the trial in the matter has not yet concluded.

On behalf of the State, learned APP for the State has vehemently opposed the prayer made by the applicant/petitioner placing reliance on the status report that has been submitted under the signatures of Insp.

Alok Kumar Rajan, SOS-1, Crime Branch, Prashant Vihar, Delhi to indicate that the trial is pending before the District Court, Saket and that out of total 16 witnesses, 15 witnesses have already been examined and only one witness remains to be cross examined and the next date before the learned Trial Court is 04.08.2020.

Furthermore, it has been submitted on behalf of the State that at the time of the arrest and search of the house of the petitioner, the copy of the passport was recovered from the rental accommodation, which on verification, was found to have expired on 20.06.2017 and thereafter, Section 14 of Foreigners Act was added in this case qua which learned counsel for the petitioner submits that the petitioner has already been granted an extension of his visa during the period that he has been incarcerated on the date 02.04.2019 and that the petitioner has already paid the penalty in relation thereto.

A further submission was made on behalf of the petitioner by his learned counsel that no Magistrate or Gazetted Officer was present at the time of the search of the applicant and that in as much as, the recovery of the alleged contraband was effected from his payjama as stated and that there has been no compliance of Section 50 of the NDPS Act, 1985.

A further submission is also made on behalf of the petitioner by the learned counsel that the testimonies that have been recorded in the instant case also indicate that the seals of the alleged contraband were also broken at the time when they were produced before the learned Trial Court and that there is a likelihood of the case property having also been tampered.

It is essential to observe that at the stage of consideration of grant of bail or otherwise, this Court cannot gauge each and every aspect of the evidence that has been led as if, it is at the stage of the pronouncement of judgment.

All the aspects which the learned counsel for the petitioner has submitted apparently undoubtedly would be asserted by the petitioner at the stage of final arguments. The matter is at the stage of virtual culmination of the prosecution evidence, since it is informed on behalf of the State by SI Sandeep, Crime Branch that there is only the cross examination of one witness i.e. the cross examination of the Investigating Officer that remains to be recorded and the examination in chief of the said witness has already been recorded, which aspect is not refuted by the learned counsel for the petitioner, and thus, as the evidence is virtually complete, it is not considered appropriate to pre-judge the trial.

In the circumstances, the prayer made by the petitioner seeking the grant of bail is declined.

However, in reply to a specific Court query to the learned counsel for the petitioner whether the cross-examination could be conducted through Video Conferencing, learned counsel for the petitioner seeks to conduct the cross-examination on the physical re-opening of the Courts.

Though, the present bail application is declined, the learned Trial Court shall expedite the completion of the trial in terms of the directions of this Court dated 02.04.2019 in Bail Appln. No.257/2019 to ensure that the trial would be finished within one month from the re-opening of the physical Courts.

Copy of this order be sent to the learned Trial Court.

ANU MALHOTRA, J

JULY 28, 2020

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