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

Date of decision: 24th August, 2020

+ **BAIL APPLN. 1182/2020 & CRL.M.A. 7393/2020, 9089/2020**

SONIA SHAMRAO NAIK GAONKAR

..... Applicant

Through: Mr. Raghav Sharma, Mr. Salvador
Santosh Rebello, Mr. Ishant Arora &
Ms. Arzu Paul, Advocates
(M-9823120280).

versus

NARCOTICS CONTROL BUREAU

..... Respondent

Through: Mr. P.C. Aggarwal, Advocate.

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been held through video conferencing.
2. The Applicant in the instant case seeks interim bail in view of the prevalent pandemic in the jail. The Applicant is a 24 year old girl who was arrested on 22nd February, 2018 in Sessions Case No. 267/2018 under Sections 8, 21, 22, 27A and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter, '*NDPS Act*'). She has been in custody for more than two years. She is a girl hailing from Goa, who was arrested from the Hazrat Nizamuddin Railway Station.
3. It is the case of the Narcotics Control Bureau (*hereinafter* '*NCB*') that she was arrested when she was found in possession of 600 gm of Methamphetamine. It is also stated that from the disclosures made by her, two other co-accused were also intercepted and further quantity of 180 gm of

cocaine was recovered.

4. The Applicant seeks bail on the ground of deteriorating conditions in the Mandoli Jail, where it is stated that there is a severe spread of the pandemic.

5. Notice was issued in this petition on 9th June, 2020. The grandfather of the Applicant had also filed a bail application being Bail Application No. 351/2020, which is also pending. The Status Report was called for along with the nominal roll.

6. Since the Applicant is a permanent resident of Goa, where her family also resides, on 13th July, 2020, the Court had directed that an affidavit be filed by the family members as to how the Applicant would join the trial, in case interim bail is granted to her. The mother of the Applicant has filed an affidavit dated 17th August, 2020 stating that though they are residents of Goa, the Applicant will ensure advance travel booking for attending each and every date of hearing before the Trial Court and she would also be present even for video conferencing hearings. On 13th July, 2020, the Applicant was also asked to join the proceedings from jail. The grandfather of the Applicant who had filed the application for regular bail had also joined the video conferencing hearing.

7. Today, Mr. Sharma, Id. counsel for the Applicant submits that the statement made by the Applicant under Section 67 has already been retracted and the same cannot be made the basis for continuing to keep the Applicant in jail. He submits that the Call Data Records (CDRs) which are placed on record show that there is no communication between the Applicant and the other co-accused. Id. counsel also relies upon the decision of the Court in *Sikodh Mahto and Ors. v. State* [262 (2019) DLT 74, Paras 50 to 51] to

argue that the mandatory condition under Section 50 of the NDPS Act has not been fulfilled. He also submits that only a designated officer could initiate the hearing and even at the time of seizure, which has allegedly taken place in Hazrat Nizamuddin Railway Station, no independent witness was present at the time of arrest or at the time of seizure. This shows that there is a clear doubt as to whether the recovery was in fact made from the Applicant.

8. On the other hand, Mr. P.C. Aggarwal, Id. counsel appearing for the NCB submits that the Applicant is in good health and in fact jail has proved to be a safe place for the Applicant. He objects to the grant of interim bail on the ground that commercial quantities of 600gms Methamphetamine has been recovered from the Applicant's possession. He relies upon the presumption in Sections 67, 35 and 54 of the NDPS Act to argue that the benefit of doubt cannot be given to the Applicant.

9. Mr. Aggarwal, Id. counsel submits that there are two witnesses whose names are mentioned in the seizure memo. However, Mr. Sharma, Id. counsel submits that the two witnesses are officials of Railway Police and they are not independent witnesses.

10. This Court has perused the pleadings and status reports on record. A perusal of the petition shows that the Applicant is a well-educated girl who completed her M.Sc. in Pharmaceutical Chemistry. She has been in custody for almost two years and six months. The alleged seizure from the Applicant has clearly not been in the presence of two independent witnesses. The said two witnesses are officials from the Railway Police who may have been assisting the NCB. Moreover, the Applicant has been fully supported in her petition for bail by her entire family. The Applicant's mother works as a Stenographer in the District Court, Panjim, Goa. The father of the Applicant

is a retired Professor from the Goa University. The Applicant has two siblings. The affidavit filed by the Applicant's mother has also satisfied this Court that the Applicant would join the proceedings and the trial, whenever called for.

11. In the affidavit of the mother, it is mentioned that the Applicant is suffering from redness and rashes on her body and treatment is being given in the prison itself. It is the mother's case that her health has further deteriorated. In response to this affidavit, a report was called from the jail authorities. The same has been received today and reads as under:

"1. The inmate/patient Sonia D/o Shamrao Naik Gaonkar is lodged in Mandoli Central Jail No.16. She has no history or any Chronic illness like Tuberculosis, Diabetes, Hypertension, Asthma and Seizures.

2. At present she has no complaints, except mild skin allergy.

3. For skin allergy, she is receiving treatment from jail and has shown improvement.

4. At present her vitals are stable."

COPY THE REPORT

12. A perusal of the above report shows that the Senior Medical Officer admits that the Applicant is suffering from skin allergies. There is no response to the specific plea of the mother in her affidavit where it has been stated that due to the skin allergy, she has been given medicines in jail and she has suffered a negative reaction to them. Further, considering the situation of the pandemic as also various news articles published from time to time about the spread of COVID-19 even in the jail, the threat of the pandemic is a serious threat. The Applicant is a permanent resident of Goa with deep roots in society as is clear from her mother's affidavit as also the petition filed by her grandfather.

13. In the nominal roll, the jail conduct of the Applicant is found satisfactory. There are no other cases pending against the Applicant. The statement given by the Applicant under Section 67 has been retracted by her affidavit. However, this Court is not inclined to go into the validity or otherwise of the said statement at this point.

14. The present petition is only seeking interim bail in order to enable the Applicant to meet her family. Considering the overall facts and circumstances of this case, this Court is inclined to give interim bail to the Applicant. Accordingly, the Applicant shall be released on interim bail for a period of 45 days from the date of release on the following terms and conditions:

- i) Applicant shall furnish a personal bond to the tune of Rs.50,000/- along with surety of the like amount to the satisfaction of the concerned Trial Court;
- ii) The Applicant shall reside in her permanent address with her family and shall not move out of the precincts of Bambolim, Tiswadi, North Goa, Goa – 403202;
- iii) The Applicant shall report telephonically to the local SHO at least twice a week;
- iv) The IO in Delhi from the NCB shall be continuously in touch with the Applicant on her live mobile number which shall be provided by the Applicant;
- v) The Applicant shall participate in the trial of the case whenever directed and shall make arrangements to either be in Delhi or participate in the hearing through video conferencing;
- vi) The Applicant shall not contact any of the other co-accused or take any steps to hamper the trial of the case.

15. The Applicant shall surrender upon the expiry of 45 days, from the date of release.

16. With the above observations, the present petition is disposed of. All pending applications are also disposed of.

PRATHIBA M. SINGH
JUDGE

AUGUST 24, 2020

Rahul/A

