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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ BAIL APPLN.1822/2020
STEPHANIE CARPIO POLICARPIO Petitioner
Through: Ms. Rashmi Kaushik, Advocate

Versus

NARCOTICS CONTROL BUREAU Respondent
Through: Mr. P.C. Aggarwal, Advocate

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

(VIA VIDEO CONFERENCING)

ORDER
% **27.08.2020**

1. The present application has been filed seeking regular bail in SC No. 124/2018 registered under Sections 21 & 23 of the NDPS Act.
2. Learned counsel for the petitioner submits that the petitioner has been falsely implicated in the present case. She submits that the prosecution story of the petitioner being apprehended at the hotel is false as the petitioner was apprehended at the airport itself. She has referred to the statement of PW-4 *Jeevan Kumar* in this regard. She submits that the NCB officials have not taken any steps to find out other cartel members, as alleged. Lastly, it was submitted that as per the statement of *Jeevan Kumar*, the proceedings concluded at about 1:00 p.m. however, as per the seizure memo, the same concluded at 5:00 p.m.
3. Learned counsel for the respondent submits that on the basis of secret information, the NCB officials intercepted the petitioner in Room No. 302,

Hotel Pink City, Paharganj, New Delhi where she had checked in and on examination, a bag containing 1.9 kg of cocaine was recovered. He further submits that the rigours of Section 37 of NDPS Act are applicable in the present case. He submits that so far out of 12 witness, 6 witnesses have been examined. He further submits that as per the records of the case, the proceedings started at about 1300 hrs. and continued till about 1700 hrs. He further submits that cross examination of the said witness *Jeevan Kumar*, who is a receptionist at the aforesaid hotel, would show that the witness specifically stated that firstly the petitioner came to the hotel and checked in Room No. 302 and thereafter three NCB officials came, out of which two officials were male and one was female. He further submits that a Court question was put to the witness *Jeevan Kumar* as to whether the petitioner entered the hotel with any bag, to which he answered that she was carrying one blue coloured bag. It is also submitted that it was the same blue coloured bag from which cocaine was seized. It is submitted that the present case involves commercial quantity of cocaine.

4. Section 37 of the Narcotic Drugs and Psychotropic Substances Act, 1985 reads as under:-

“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 [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.”

5. In terms of Section 37 of NDPS Act, one of the requirements include that the Court must be satisfied that there are reasonable grounds for believing that the accused is not guilty of such an offence. Admittedly, Section 50 of the NDPS Act is not applicable as the seizure was from the bag. As per Serial No. 27 of the Notification Specifying Small Quantity and Commercial Quantity, the commercial quantity for cocaine is 100 grams and the seizure in the present case is of 1.9 kg. Learned counsel for the petitioner has not been able to show that the defence of apprehension at the airport itself was taken at any previous stage.

6. After hearing the submissions and looking into the fact that commercial quantity of cocaine was recovered from the petitioner's bag and that on *prima facie* reading of the testimony of *Jeevan Kumar* including his cross examination, this Court is not persuaded to reach a satisfaction that the petitioner is not guilty of committing the stated offence.

7. The bail application is accordingly dismissed.

MANOJ KUMAR OHRI, J

AUGUST 27, 2020/p'ma