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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 1161/2019**
FRANK VITUS Petitioner

Through: Mr. Ajit Sharma, Mr. Rishabh
Sharma, Advs.

versus

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

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

13.02.2020

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The applicant is present pursuant to the production warrants issued.

Submissions have been made on behalf of either side on the application filed by the applicant seeking grant of bail in relation to SC/9148/2016, under Sections 22/23/29 of the NDPC Act. It has been submitted on behalf of the applicant that he has been falsely implicated in the instant case and that there is no recovery of any contraband effected from him, in as much as the alleged recovery of 1.900 kg of metamphetamine was recovered from the co-accused Eric Jayden in a black colour bag in a Swift Dezire taxi bearing no.HR66A 4681, in which the applicant herein was only a passenger. It has *inter alia* been submitted on behalf of the applicant that the applicant has already undergone approximately 6 years of incarceration and there are 23 witnesses yet to be

examined. *Inter alia* it has been submitted on behalf of the applicant that the alleged disclosure statement made by the applicant under Section 67 of the NDPS Act has also since been retracted by the applicant and no reliance thereon can be placed by the NCB. It has been submitted on behalf of the applicant that pursuant to the alleged disclosure statement made by the applicant, the recoveries effected at his residence do not relate to any narcotic substances as per the chemical examination report of the analysis conducted by the Central Revenue Control Laboratory which report gives a negative report in relation to the existence of both narcotic and psychotropic substance in the sample analysed.

On behalf of the applicant it has further been submitted while placing reliance on the verdict of the Hon'ble Supreme Court in ***Sujit Tiwari vs. State of Gujarat & Anr.*** in CrI.A. No.1897/2019 as well as on the verdict of the Hon'ble Supreme Court in ***Union of India vs. Rattan Malik @ Habul 2009 (1) ALC (Crl) 684*** with specific reference to observations in para 14 to submit to the effect that at the time of consideration of the grant of bail, the satisfaction of the Court about the existence of the twin conditions for the limited purpose of release of accused on bail need to be considered alone that is to see whether there is reasonable ground for believing that the accused is not guilty of the offence that he has been charged with and whether he is not likely to commit any offence under the NDPS Act while on bail.

It is *inter alia* submitted on behalf of the applicant that in the case of ***Sujit Tiwari (supra)***, the verdict of the Hon'ble Supreme Court dated 28.01.2020, the applicant therein had been allowed to be released on bail on

conditions imposed thereby observing to the effect that the applicant in that case was entitled to bail in as much as there was a possibility that he was not aware of the illegal activities of his brother and other two members.

The applicant present in person has submitted that his conduct has been satisfactory and that there is nothing on record to connect him to the alleged commission of the crime and that his mobile phone has been returned by the Investigating Agency and there is nothing to indicate any contact between him and the co-accused.

On behalf of the NCB, the application has been vehemently opposed submitting to the effect that the applicant was present in the vehicle in question in which there were three other accused persons, of whom, the recovery was effected from the bag in the possession of one Eric Jayden who has since been absconding as indicated vide proceedings in Bail Application No.496/2019 of the co-accused vide order dated 30.01.2020 which indicates to the effect that the said Eric Jayden who was released on bail has since absconded. It has been submitted on behalf of the NCB that the applicant along with other co-accused was present in the vehicle i.e. Swift Dezire taxi referred to hereinabove to deliver the drugs near Hotel International Inn, Mahipal Pur, New Delhi as per secret information received which was also affirmed by the applicant through his disclosure statement under Section 67 of the NDPS Act, 1985. It has been submitted on behalf of the NCB that there is every likelihood of the applicant not conforming to any conditions imposed and that he would be likely to violate the grant of the conditions of bail if any, so granted and that there is nothing on the record to indicate that the applicant has not committed any offence

whatsoever and in as much as the recovery effected was of 1.900 kg of metamphetamine which was a commercial quantity of contra band, the embargo of Section 37 of the NDPC Act, 1985 would wholly apply.

On a consideration of the rival submissions addressed, it is essential to observe that the facts of the case in *Sujit Tiwari (supra)* relied upon on behalf of the applicant are not at all in *pari materia* to the facts alleged in the instant case in as much as in the case of *Sujit Tiwari (supra)*, the applicant therein was observed to have possibly not been aware of the alleged conspiracy between his brother and two other members of the ship in which the alleged contraband was recovered with the applicant in the said case having sent a list of the crew members. In the instant case, the applicant herein is alleged to have been in the taxi in which the alleged commercial quantity of the contra band was being carried to deliver near Hotel International Inn, Mahipal Pur, New Delhi, in relation to which the applicant is alleged to have also made a disclosure statement in terms of Section 67 of the NDPS Act, 1985 that the same is also stated to have since been retracted.

In the circumstances qua the prayer made by the applicant seeking grant of bail in relation to the alleged recovery which is of commercial quantity of metamphetamine, it is apparent that the embargo of Section 37 of the NDPC Act, 1985 applies wholly. The prayer by the applicant seeking grant of bail is thus declined.

However, in as much as the applicant is stated to have been incarcerated since May, 2014 with it having been submitted on behalf of the applicant that out of 34 cited witnesses, only 11 of them have so far been examined, the learned trial Court shall make an endeavour to complete the

trial in the instant case within a period of six months of the receipt of this order.

The bail application is declined.

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

ANU MALHOTRA, J

FEBRUARY 13, 2020

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