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

+ **BAIL APPLN. 3036/2019**

BARTHOLOMEW

..... Petitioner

Through: Mr Maneesh Bhardwaj and Mr
Anirudha Singh, Advocates.

versus

THE STATE

..... Respondent

Through: Mr Amit Gupta, APP for State.
ASI Ajay Kumar, SIU-Crime Branch.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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21.01.2020

1. The petitioner has filed the present petition, *inter alia*, praying that he be released on bail in FIR No. 87/2017, registered under Sections 21/61/85 of the Narcotics Drugs and Psychotropic Substances Act, 1985 (NDPS Act) and Section 14 of the Foreigners Act, 1946.
2. The status report indicates that a secret information was received on 13.06.2017 that the appellant is involved in supply of cocaine in different parts of Delhi and he would be delivering a huge quantity of cocaine to the person near Balmiki Ashram, Model Town-I, Mahatma Gandhi Road, Delhi. According to the respondent, this was reduced in writing and was informed to the ACP, SIU-Crime.
3. It is stated that on the instructions of ACP, SIU a team of officials was constituted to conduct a raid and the petitioner was apprehended on being pointed out by the secret informer at the particular spot. The petitioner was searched and in the said search, one transparent polythene bag containing

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white powder was recovered from the shorts worn by the petitioner. It is stated that the said powder was tested and was found to be cocaine.

4. The learned counsel appearing for the appellant submits that the provisions of Section 50 of the NDPS Act were not complied with. He submits that there is interpolation in the petitioner's response, which is recorded in the notice issued under Section 50 of the NDPS Act. He further submits that a field-testing kit was not issued to any member of the raiding party on 13.06.2017. The kit, which was allegedly used for testing the substance, had been issued on 09.06.2017 and there is no material to show that the said kit had been issued to the raiding party constituted on 13.06.2017. Lastly, he submits that the petitioner was picked up from his house and the statement of his neighbours, which would verify the same, had not been recorded.

5. This Court has seen the case file, which has been brought by the learned APP. This Court is unable to readily accept that there is any interpolation in the petitioner's alleged response recorded in notice issued under Section 50 of the NDPS Act.

6. At this stage, this Court is unable to evaluate the case set up by the respondent. There does not appear to be any apparent flaw in the case sought to be set up by the prosecution. The question whether any recovery alleged to have been effected, is a matter to be considered after trial.

7. In view of the above, this Court is unable to conclude that, *ex facie*, there are reasonable grounds for acquittal of the petitioner for commission of the alleged offence. The petitioner is also charged with an offence under

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Section 14 of the Foreigners Act, 1946. He has not produced any material to indicate as to when he arrived in India and whether the same was on a valid visa, which was subsisting at the material time.

8. In view of the above, this Court is unable to conclude that the conditions for granting bail as specified in Section 37 of the NDPS Act have been met. The petition is, accordingly, dismissed.

9. However, it is clarified that this would not preclude the petitioner from applying afresh at a later stage, if the petitioner is able to establish the conditions as set out in Section 37 of the NDPS Act.



VIBHU BAKHRU, J

JANUARY 21, 2020
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