

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

Reserved on : 25.01.2021
% **Pronounced on : 08.02.2021**

+ **BAIL APPLN. 184/2020, CrI. M.A. 9071/2020, CrI. M.A. 12160/2020 & Cr. M.A. 17066/2020.**

HERRY @ IKWUNNAYA KIZITO IFEANYI

..... Petitioner

Through: Ms. Sushma Sharma and Mr. Girish Kumar, Advs.

versus

STATE

..... Respondent

Through: Dr. M.P. Singh, APP with Insp. Pravesh Kasana

CORAM:
HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

ORDER

RAJNISH BHATNAGAR, J.

1. By way of this order, I shall dispose of the present petition filed under Section 439 Cr.P.C. on behalf of the petitioner for grant of bail in case FIR No. 82/19 U/s 21 NDPS Act & 14 Foreigners Act, registered at Police Station New Friends Colony (AATS).

2. Briefly stated, the allegations against the petitioner are that he is a foreign national who has been staying in India without any visa. It is

further alleged against him that on 15.04.2019 at 8:45 p.m. in front of Batra Cinema, Community Centre, NFC, he was apprehended and found in possession of 39.6 grams of cocaine including the weight of polythene. The petitioner was allegedly found in possession of intermediate quantity of cocaine.

3. I have heard the Ld. counsel for the petitioner, Ld. APP for the State and also perused the records of the case.

4. It is submitted by the Ld. counsel for the petitioner that the quantity recovered from the petitioner is intermediate quantity and hence there is no bar of Section 37 of the NDPS Act. She further submitted that no public witness had been joined by the IO at the time of arrest and recovery from the petitioner. She further submitted that the prosecution has not followed the mandatory provision of Section 50 of the NDPS Act. It is further submitted by her that the case property has been tampered with before sending the same to FSL as two samples were drawn at the same time. She further submitted that the petitioner has clean past antecedents.

5. On the other hand, Ld. APP for the State has submitted that all the contentions raised by the counsel for the petitioner are matter of trial. He further submitted that before the petitioner could be arrested, he threw one polythene after taking out from his right side pocket of the pant on the road, so there was no occasion to serve the notice U/s

50 of the NDPS Act upon the petitioner before his search and provisions of Section 50 of the NDPS Act does not apply in the facts and circumstances of this case. It is further submitted by the Ld. APP that the petitioner is a foreign national and in case he is enlarged on bail, he will not be available for trial.

6. As far as the contention of the counsel for the petitioner with regard to the tampering of sample and non joining of the public witnesses, the same cannot be looked into at the stage of bail and are matter of trial.

7. This is not in dispute that the contraband recovered from the petitioner is 35 gram of cocaine and the said contraband falls within the category of intermediate category, therefore, rigors of Section 37 shall not apply. The challan has already been filed before the Ld. Sessions Court and the presence of the petitioner is required only during the trial. The respondent/state has not placed anything on record to show that the petitioner is a habitual offender and is involved in similar type of offence and the allegations against the petitioner are subject to proof during the trial.

8. So far as the contention of the Ld. APP that the petitioner is a foreign national and he may not be available for trial, this contention of the Ld. APP can be taken care of by directing the petitioner to produce two solvent sureties for securing his presence during the trial.

9. During the course of hearing of this petition, the petitioner has placed on record the address of one Raj Kumar Yadav to contend that in case, he is released on bail, he would be living on rent at a monthly rent of Rs. 6000/- per month at his house. This factum was got verified and as per the verification report filed by the IO the said Raj Kumar Yadav has made a statement to the effect that he would allow the petitioner to live in his house at a monthly rent of Rs. 6000/- per month and the paper formalities would be done in case the petitioner is released on bail.

10. Therefore, keeping in view the fact that the quantity of contraband falls within the category of intermediate category, petitioner has clean past antecedents and the charge sheet stands filed, this court is of the considered opinion that the petitioner deserves to be enlarged on bail subject to furnishing of two local solvent sureties to the tune of Rs. 50,000/- each to the satisfaction of the trial Court. The petitioner shall furnish an undertaking that he shall intimate his whereabouts to the concerned SHO on the 1st day of every month. The petitioner shall also telephonically report at the local police station once a week on every Monday. On each such occasion, the petitioner shall drop a Google pin from his mobile phone to the SHO of the police station concerned so as to inform the SHO about his current location.

11. In the event of violation of any of the condition mentioned above, the respondent/state can lay a motion for cancellation of bail of the petitioner before the trial Court. Concerned Superintendent Jail is directed not to release the passport of the petitioner without the petitioner obtaining permission from the Trial Court. The bail application is disposed of accordingly. All pending applications (if any) are also disposed of accordingly. Copy of this order be also sent to the concerned Jail Superintendent.

RAJNISH BHATNAGAR, J

FEBRUARY 08, 2021

Sumant



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