

(VIA VIDEO-CONFERENCING)

* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on : 31.08.2021

Pronounced on : 08.09.2021

+ BAIL APPLN. 1281/2021

MIKE @ IMMANUEL(PRESENTLY IN JAIL)

.....Petitioner

Through: Mr. Arun Kumar Srivastava, Adv.

Versus

STATE OF NCT DELHI (THR. STANDING COUNSEL)

..... Respondent

Through: Ms. Rajni Gupta, APP for the State
with SI Barkat, P.S.Crime Branch.

CORAM:

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

ORDER

RAJNISH BHATNAGAR, J.

1. The present bail application has been filed by the petitioner under Section 439 Cr.P.C. read with Section 482 Cr.P.C. seeking regular bail in case FIR No. 31/2015 under Sections 21 NDPS Act, Section 14 of Foreigners Act and Section 174-A IPC registered at Police Station Crime Branch.

2. Briefly stated, the facts of the case are that on 11-03-2015 at about 10:30 PM, secret information was received by SI Karambir in the office of Narcotics Cell, Crime Branch, Delhi that one Nigerian National namely Mike staying in the area of Mehrauli, Delhi, is indulging in supply of Cocaine in Delhi and he would be coming to deliver a huge consignment of Cocaine to someone between 12:00 Midnight to 01:00 AM in the intervening night of 11/12.03.2015 at bus stand Panchkuian near R. K. Ashram Chowk, Delhi. This information was reduced into writing vide DD No. 26 at Narcotics Cell, Crime Branch and the DD entry was forwarded to the then Insp. Narcotics Cell in compliance of section of 42 NDPS Act. A raiding team was constituted by SI Karambir Singh and a trap was laid at the bus stand Panchkuian near R. K. Aashram Chowk, Delhi. At about 12:25 AM, one Nigerian National was seen coming from R. K. Aashram, Chowk, Delhi side, who was identified by the informer as the petitioner Mike from a distance of 15-20 meters and then the informer went away from the spot. The said Nigerian National came at the bus stand and started waiting for someone. After 3-4 minutes, when he started going toward R.K. Ashram, he was apprehended by SI Karmabir with the help of staff. During enquiry the apprehended person revealed his name and address as Mike (the petitioner) S/o Obinnjekwe r/o H. No. 10, Sodi Off, Ajrogun Street, Logus, Nigeria. The cursory search of the petitioner was made by SI Karmabir during which one transparent polythene having white colour powder mouth tied with rubber band was recovered from the left side pocket of his pant. The recovered transparent polythene was opened after removing the rubber band

and the white powder was checked on Field Testing Kit and found to be Cocaine. The recovered transparent polythene with contraband was weighed on electronic weighing machine and found to be 40 Grams which is intermediate quantity. In the present case the petitioner was arrested by the Crime Branch Police on 12.03.2015 in FIR No.31/2015 under Section 21 NDPS Act and he was granted bail vide order dated 29.07.2016 by the Ld. Special Judge, NDPS (Central), Tis Hazari Courts. During pendency of the trial the petitioner, however, he failed to appear before the Ld. Trial Court and consequently he was declared proclaimed offender (PO) vide order dated 31.05.2018. Later on Petitioner was arrested by the Crime Branch Police on 06.10.2020 for non-appearance in response to proclamation under Section 82 of Cr.P.C. and presently in judicial custody in present FIR u/s 174-A IPC.

3. I have heard learned counsel for the petitioner and learned APP for the State and perused the status report filed on behalf of the State.

4. It is submitted by the Id. counsel for the petitioner that the petitioner in the present case was arrested on 12.03.2015 u/s 21 NDPS and he was granted bail vide order dated 29.07.2016 by the Ld. Special Judge, NDPS (Central), Tis Hazari Courts. During pendency of the trial the petitioner, failed to appear before the Ld. Trial Court and consequently he was declared proclaimed offender (PO) vide order dated 31.05.2018. Further the petitioner thereafter was apprehended and arrested in another case FIR No.38/2019 dated 21.08.2019 U/S 20 NDPS Act and 14 Foreigner Act, PS

Anand Vihar Railway Station, Delhi. On receipt of information from PS Anand Vihar Railway Station, Delhi and after obtaining permission from the court the petitioner was arrested on 06.10.2020 in the present case U/S 174A IPC and since then he is in judicial custody. Charge sheet U/S 174A IPC against the petitioner has been filed before the trial court. It is also submitted that the petitioner has been granted bail in the aforesaid case FIR No.38/2019 U/S. 20 NDPS Act PS Anand Vihar Railway Station vide order dated 20.11.2020. Lastly, it is submitted by the Id. Counsel for petitioner that the petitioner is not required for the purpose of investigation in the present case and no purpose would be served by keeping him in judicial custody.

5. On the other hand, Ld. APP for the state vehemently opposed the bail application and submitted that during trial the petitioner had jumped bail and later on, he was declared P.O. by the Hon'ble Court of Shri Vinod Kumar, ASJ, Special Judge NDPS, Tis Hazari Courts, Delhi on 31.05.2018. She Further submitted that while on bail in the present case i.e. FIR No. 31/2015 under Sections 21 NDPS Act, the present petitioner on 21.08.2019 was apprehended with 14 Kg Ganja (commercial quantity) at Anand Vihar Railway Station, Delhi and in this regard a case vide FIR No. 38/2019, dt. 21.08.2019, U/s 20 NDPS Act, P.S. Anand Vihar Railway Station was registered. It is further submitted by Id. APP that, the petitioner is not having any permanent residence/address in Delhi or India and the petitioner did not co-operate during investigation and he also jumped the bail in the

past and got indulged himself in crime of similar nature. It is further submitted by 1d. APP that if the petitioner is granted bail, he may jump the bail and may not be available for the trial. In the instant case, there is nothing before this Court to believe that the petitioner/accused is not guilty or he would not commit the offence once granted bail. It is clearly visible by the status report that petitioner has propensity to commit crime and he has already been declared as PO and while being on bail he committed another offence of similar nature. He is a foreign national and may not be available to face the trial, if released on bail and there are chances that he may flee as he is not having any residence in Delhi or anywhere in India. It is also pertinent to mention that earlier when he was granted bail in present FIR u/s 21 NDPS Act, the petitioner jumped the bail and did not appear to face the trial due to which he was declared absconder and subsequently Section 174A IPC was added in the present FIR by the way of supplementary chargesheet.

6. During the course of arguments, it is submitted by the 1d. Counsel for the petitioner that the Petitioner was unable to appear before trial court due to some unavoidable circumstances as his sister expired due to prolonged illness. If this was the scenario then he must have approached the concerned court stating the reason to show his bonafides as to why he failed to appear but instead he did not approach the concerned court which shows the malafide intentions of the applicant/petitioner.

7. Be that as it may, in these circumstances and looking into the conduct of the petitioner, no ground for bail is made out, the bail application is, therefore, dismissed.

8. Nothing stated hereinabove shall tantamount to the expression of any opinion on the merits of this case.

RAJNISH BHATNAGAR, J

SEPTEMBER 08, 2021



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