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* **IN THE HIGH COURT OF DELHI AT NEW DELHI****Judgment delivered on: 11.04.2022**+ **BAIL APPLN. 1960/2020**
NASTOR FARIRAI ZISO PetitionerThrough : Mr. Ajay Kumar, Advocate.
(DHCLSC)

versus

NCB Respondent

Through: Mr. Subhash Bansal, Senior Standing
Counsel for NCB.**CORAM:**
HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

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J U D G M E N T**ANOOP KUMAR MENDIRATTA, J. (ORAL)****Crl. M.A. No.4032/2022 in BAIL APPLN. 1960/2020**

1. This is an application under Section 445 read with Section 482 Cr.P.C. for modification of order dated 15.12.2021 in Criminal Bail Application No.1960/2020 and for direction to release the applicant on furnishing personal bond.

2. Issue notice. Learned Senior Standing Counsel for the respondent accepts notice.

3. Learned counsel for the petitioner submits that the applicant/petitioner is a woman and a foreign national, who was directed to be released on bail on furnishing personal bond in the sum of Rs. 1,00,000/- (Rupees One Lakh Only) with 02 (two) solvent sureties in the like amount *vide* order dated



20.04.2021. The said order was further modified *vide* order dated 14.09.2021 for releasing the applicant on personal bond for a sum of Rs.1,00,000/- (Rupees One Lakh Only) with 02 (two) sureties in the sum of Rs.50,000/- (Rupees Fifty Thousand Only) each, since the petitioner was unable to furnish the surety bonds.

Further, since the petitioner could not arrange even the surety bonds at reduced amount and continued to remain in custody, the order was further modified *vide* order dated 15.12.2021, directing the petitioner to be released on her furnishing personal bond in the sum of Rs. 50,000/- (Rupees Fifty Thousand Only) with one surety in the like amount to the satisfaction of learned trial court.

4. It is submitted by learned counsel for the petitioner that the case is at the initial stage of prosecution and the petitioner is in custody since about 02 (two) years and 08 (eight) months. Further, the petitioner is unable to discharge her obligation of furnishing even reduced surety bond being a foreign national and has not been able to avail the benefit of bail despite repeated modifications by this Court.

5. The application has been opposed by learned Senior Standing Counsel for the respondent. It is submitted that the possibility of petitioner fleeing the course of justice cannot be ruled out, in case she is released on furnishing of cash in lieu of surety. Leaned Senior Standing Counsel for the respondent has further submitted that in order dated 14.09.2021, the prayer for releasing the petitioner on personal bond was declined.

6. The petitioner is facing trial for possession of controlled substance arising out of SC No. 411 of 2019 in FIR No.VIII/27/DZU/2019 under



Section 9A/25A of the Narcotic Drugs And Psychotropic Substances Act, 1985, registered at P.S. : Narcotics Control Bureau (DZU), New Delhi.

I am of the considered opinion that *vide* order dated 14.09.2021, only prayer *qua* releasing the petitioner on personal bond was declined but the petitioner was allowed to furnish two sureties in the sum of Rs.50,000/- (Rupees Fifty Thousand Only) each. The question of releasing the petitioner on deposit of cash in lieu of personal bond/surety bond was not considered, at that stage.

7. It has been submitted on behalf of the petitioner that applicant has contacted Embassy of Zimbabwe multiple times but has not been able to obtain surety and she does not know anyone in this country, who can discharge the obligation of surety.

It may be observed that it would be a negation of the principle of rule of law and violative of constitutional mandate and principles of human rights in case benefit of Section 445 Cr.P.C. is denied to a foreign national merely on the ground that a foreign national is likely to escape, if released on bail. This would lead to incarceration of accused for an unlimited period till conclusion of trial even despite being granted the discretion of bail by the courts. A mere apprehension expressed by the prosecution that the accused may flee the course of justice, cannot be the sole determinative factor for denying benefit of Section 445 Cr.P.C. without consideration of other circumstances and balancing factors in this regard. This apprehension may still theoretically persist even in a case where surety bond is furnished but the liability of surety is only to the extent of amount mentioned in the surety bond.



The aforesaid apprehension of the accused fleeing from the course of justice was appropriately kept in consideration while passing the orders on bail and imposing the other conditions on the petitioner of informing her address to NCB on being released on bail. The petitioner was also directed to report to NCB office once in a week till conclusion of trial and not to leave the limits of NCT of Delhi without prior permission of the trial court. The passport of the applicant is also stated to have been seized.

Further, denying deposit of cash in lieu of surety in all such cases may become punitive affecting the bifocal interest of justice to the individual involved as well as the society.

8. It may also be appropriate to notice the observations of the Hon'ble Supreme Court in ***"Gudikanti Narasimhulu and Others Vs. Public Prosecutor"*** 1978 AIR SC 429 as under:-

"Personal liberty, deprived when bail is refused, is too precious a value of our constitutional system recognised under Art. 21 that the curial power to negate it is a great trust exercisable, not casually but judicially, with lively concern for the cost to the individual and the community." It was further held that "deprivation of personal freedom, ephemeral or enduring, must be founded on the most serious considerations relevant to the welfare objectives of society, specified in the Constitution."

9. The petitioner, who is a woman and a foreign national, cannot be forced to undergo incarceration till the conclusion of trial merely because she is unable to furnish a local surety bond. The case does not involve the strict rigours/embargo under Section 37 of NDPS Act. The ends of justice can be



suitably achieved in the facts and circumstances of the case by accepting the deposit of cash under Section 445 of Cr.P.C. in lieu of surety bond.

10. For the reasons detailed above and considering the facts and circumstances of the case as well as the fact that the petitioner is a woman/foreign national, who has been unable to avail the benefit of order on bail, she be released on bail on furnishing personal bond in the sum of Rs.50,000/- (Rupees Fifty Thousand Only) and deposit of cash of Rs.50,000/- (Rupees Fifty Thousand Only) in lieu of surety bond to the learned trial court. The order dated 20.04.2021 is modified to aforesaid extent. However, the other terms and conditions mentioned therein shall remain the same.

The application is accordingly disposed of.

A copy of this order be sent to learned Trial Court and Jail Superintendent for information and compliance.

ANOOP KUMAR MENDIRATTA
(JUDGE)

APRIL 11, 2022/j