

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

Reserved on : 09.03.2021

Pronounced on : 20.04.2021

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+ **BAIL APPLN. 2129/2018**

DAVID COLLIN @ MADHUABUCHI OKORO

..... Petitioner

Through: Mr. Adarsh Priyadarshi, Advocate.

Versus

NARCOTICS CONTROL BUREAU

..... Respondent

Through: Mr. Yatharth Singh, Advocate.

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 regular bail in S.C. No. 8522/2016, NCB Vs. Sita @ Christina Rozaria @ Priya Mandal & Anr., U/s 8, 21, 22, 23 & 29 NDPS Act.

2. Briefly stated, the facts of the case are that on the basis of secret information, two parcels booked under Airway Bill No. 7185476351 and 7185476362 destined from New Delhi to Canada were detained at DHL Courier Company at Kirti Nagar. The said parcels were booked by co-accused Sita @ Priya Mandal @ Christina Rozaria at the instance

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of the present petitioner David Collins. Both the parcels were examined and 245 grams and 425 grams of Heroin respectively were recovered. Thereafter search was also conducted at the residence of present petitioner which also resulted in to the recovery of 12 grams Cocaine and 20 gm Methamphetamine.

3. I have heard the Ld. counsel for the parties and perused the records of this case.

4. Ld. counsel for the petitioner has argued on the lines of the bail application. It is submitted that there is no evidence to show that 12 grams Cocaine and 20 gm Methamphetamine was recovered from the residence of the petitioner. It is further submitted by the Ld. counsel for the petitioner that the recovered quantity from the petitioner is not a commercial quantity. It is further submitted that the petitioner has no role in booking the parcels which were booked by accused No. 1 who claimed herself to be the wife of the petitioner. He further submitted that the accused is in J.C. since 26.07.2015. It is further submitted by the counsel for the petitioner that the petitioner has no concern with co-accused, so any recovery alleged to have been effected from her at her instance cannot be attributed to the petitioner. He further submitted that the petitioner is not in conspiracy with co-accused. It is further submitted by the Ld. counsel for the petitioner that notice U/s 50 of the NDPS Act is a defective notice which in itself vitiate the entire

proceedings. It is further submitted by the counsel for the petitioner that the prosecution cannot be allowed to count the weight of Heroin recovered from the co-accused against the petitioner. He further submitted that the petitioner is having clean past antecedents. The counsel for the petitioner has relied upon:

- (a) *Amar Singh Ramjibhai Barot vs State of Gujarat (19 September, 2005) Supreme Court of India, Appeal (Crl.) 1218 of 2005*
- (b) *Dinesh Singh Dadhwal Vs State of Punjab (15 October, 2012) High Court of Punjab and Haryana at Chandigarh, CRM-M No. 23217 of 2012 (O&M).*
- (c) *Raj Karan Singh @ Rajan Vs State of Punjab (29 June, 2015) High Court of Punjab & Haryana at Chandigarh, CRM-M-17321 of 2015.*
- (d) *Vicky Kaur vs State of Punjab (13 August, 2018) CRR No. 1785 of 2018 (O&M) High Court of Punjab and Haryana at Chandigarh.*

5. On the other hand, it is submitted by the Ld. counsel for the respondent that after the recovery of contraband at DHL Courier office, search was conducted at the residence of the petitioner which resulted in recovery of 12 grams Cocaine and 20 gm Methaemphtaine. It is further submitted by the Ld. counsel for the respondent that co-accused Sita @ Priya Mandal gave voluntary statement U/s 67 of the NDPS Act wherein she has categorically stated that she had booked the parcels in questions after using her own ID documents at the instance of the petitioner/applicant. It is further submitted by the Ld. counsel for the

respondent that she also admitted her involvement in the drug peddling with the petitioner. It is further submitted by the Ld. counsel for the respondent that during the enquiry the petitioner also tendered his voluntary statement U/s 67 of the NDPS Act and disclosed that the parcels were booked at his instance. It is further submitted by the Ld. counsel for the respondent that the presumption U/s 35 and 54 NDPS Act are also attracted against the petitioner/accused. He further submitted that the petitioner is a foreign national and there is every possibility of his evading the trial. He further submitted that the recovered substance is **670 grams** of Heroin which is a commercial quantity. It is further submitted by the Ld. counsel for the respondent that the petitioner was standing outside the post office waiting for the co-accused to come out and both were living as husband and wife which is evident from the statement of the landlady. He further submitted that the applicability of Section 29 of NDPS Act in regard to the conspiracy can only be argued at the time of framing of charge or at the time of final arguments. He further submitted that the trial is at final stages.

6. As far as the contention of the Ld. counsel for the petitioner that notice U/s 50 of the NDPS Act is a defective notice, it requires deep scrutiny of the statement of the witnesses and the documents and at the stage of bail, it would not be proper to minutely analyze the statement of the prosecution witnesses and the documents and in depth

analysis of the case of the prosecution is not to be undertaken as it might prejudice the case of either of the parties. The question as to whether the petitioner and his co-accused were having common intention is also to be seen during the course of trial.

7. The allegations against the petitioner are that of dealing with the commercial quantity of the contraband and therefore, rigors of Section 37 NDPS Act are applicable. In the present 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 also pertinent to mention that the statements recorded U/s 67 of the NDPS Act are not exculpatory. In these circumstances, 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

APRIL 20, 2021

Sumant