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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.2816 OF 2021**

Novafor Samuel Inoamaobi	]	..	Applicant
vs.			
The State of Maharashtra	]	..	Respondent

Ms.Ashwini Achari i/b Mr.Advait Tamhankar and Taraq Sayed for Applicant.

Smt.A.A. Takalkar, APP for the State.

Mr.D.H. Kadam, Under Secretary, Home Department, Mantralaya present.

PSI Ms.Ajale V.M., ATS Thane Unit present.

CORAM : BHARATI DANGRE, J

DATE : 12TH AUGUST, 2022.

P.C.

1] The learned APP on instructions of the Additional Secretary to the Home Department makes a statement that considering the report of the Regional Forensic Laboratory, Maharashtra State, Aurangabad, the State will conduct a departmental enquiry against the concerned person.

2] The Applicant came to be apprehended on 23.10.2020, on a trap being laid on the information received that the foreign national is likely to arrive at a given place to sell cocaine to certain persons. On his personal search the alleged contraband purported to be cocaine

concealed in a blue coloured plastic bag weighing 116.19 Grams and Saffron coloured heart shape tablets weighing around 40.73 Grams and Pink coloured pills purported to be Ecstasy tablets weighing about 4.41 Grams came to be recovered.

3] On completion of investigation, charge-sheet was filed.

The report of analysis of the substance seized from the Applicant, was compiled in the charge-sheet. As far as Exhibit 1 i.e. white powder in a press-closed polythene bag packet is concerned, it was analysed to be Lidocaine and Tapentadol, which was mentioned to be falling under the purview of NDPS Act. As regards Exhibit 2 i.e. Two heart shaped orange coloured tablets put in a press-closed polythene bag is concerned, it was analysed to be tapentadol and caffeine. The Exhibit 3 i.e. two small light pink coloured tablets put in a press-closed polythene bag were analysed as Caffeine.

4] In the wake of the report submitted on 08.02.2021, the Special Judge(NDPS), Thane, rejected the bail application by making reference to Section 2(viia) and 2(xxiii a) and by placing reliance on Section 37(1) (b)(ii) of the NDPS Act, as there was recovery of the contraband from the Applicant.

5] The Assistant Director on 04.08.2022 addressed a communication to the Sr. PI of ATS, which is in the form of corrigendum to his earlier communication and he clarified that the report of analysis which mentions that the contents of Exhibit 1 falls, within the purview of NDPS Act, is incorrect recording. He expressed regret for the same and corrected the report of analysis to the following effect :

“Lidocaine and Tapentadol are detected in exhibit no.(1).

Tapentadol and Caffeine are detected in exhibit no.(2).

Caffeine is detected in exhibit no.(3).”

6] The Applicant came to be apprehended and remained incarcerated since he was found to be in possession of the substance, which is subsequently found to be not falling within the purview of NDPS Act. The Report of analysis which is received subsequently clarify that the substance which has been seized and forwarded for analysis is not a narcotic drug or psychotropic substance.

7] Article 21 of the Indian Constitution which guarantee protection of life and personal liberty, as a fundamental right is available to every person, citizens and foreigners alike. As used in the Constitution liberty means freedom from arbitrary and unreasonable restrain upon an individual. Article 21, as per S. PN Bhagwati embodies a constitutional value of supreme importance in a democratic society. The right to life and liberty is the most fundamental and cherished right, and is fundamental to the existence of a human being. It includes all those aspects of life, which make life meaningful and complete.

The only manner in which a person on he deprived of his life and liberty is by adhering to due procedure of law. In this backdrop, the unwanted incarceration of the Applicant, when the alleged seizure of contraband, is falsified by the report of the analyser, is a matter of serious concern, resulting in deprivation of his liberty.

8] The Applicant remained incarcerated from 23.10.2020 on account of the accusations of he being in possession of drug and was denuded of liberty, but even benefit of Article 21 as to the foreign

national, subject of unwanted incarceration cannot be ignored.

While releasing the Applicant on bail, as an exceptional case, I deem it appropriate to fasten liability for unlawful incarceration of the Applicant by the State Government and direct the State Government to compensate the Applicant by paying a sum of Rs.2 Lakhs within six weeks from today, reserving his right to claim compensation, by any other mode available to him.

The State Government which has proposed to conduct enquiry against the erring officers, is at liberty to recover the said amount of compensation from the Officer who would be found guilty on conclusion of departmental enquiry against the concerned officer.

Merely because the Applicant is a foreign national, he shall not be dealt with in a different manner, than an Indian Citizen. However, the argument of the learned APP that the Applicant has antecedents and he has been indulging in psychotropic drugs in the past while in the country, also do not authorize the State Government to detain him as the substance which has been seized from the present Applicant is revealed to be neither a narcotic drug or psychotropic substance in the wake of the explanation issued by the Assistant Director, Regional Forensic Laboratory, Maharashtra Government, Aurangabad.

9] Learned counsel for the Applicant makes a categorical statement that in the previous CR when the applicant was released on bail by order dated 29.09.2017, an order was passed directing the Applicant to deposit his passport with the Anti Narcotic Cell.

10] In the wake of above, the applicant deserves to be released on bail.

(a) Application is allowed.

(b) Applicant – Novafor Samuel Inoamaobi shall be released on bail in connection with C.R.No.7 of 2020 registered with Anti Terrorist Squad on furnishing P.R. bond to the extent of Rs.25,000/- with one or two sureties of the like amount.

(c) On his release, the Applicant shall furnish to the Investigating Officer details of his address and contact number, so also details of his bank account, if any, or the account of his close relative, supported by an Affidavit that the said account holder will accept the amount on behalf of the Applicant.

(d) The applicant shall report to the Investigating Officer on first Monday of every month for a period of 6 months and thereafter as and when called for.

(e) The applicant shall not leave country without prior permission of the Court.

(f) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of case so as to dissuade him from disclosing the facts to Court or any Police Officer and should not tamper with evidence.

(g) The Applicant shall regularly attend trial, on every date, unless he is exempted.

[BHARATI DANGRE, J]